The English Citizen

CENTRAL GOVERNMENT

H. D. TRAILL

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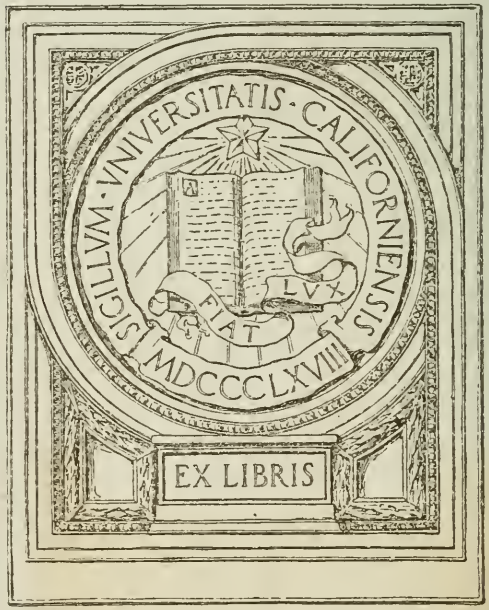

JOHN FISKE

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Central Government

THE ENGLISH CITIZEN:

HIS RIGHTS AND RESPONSIBILITIES.

CENTRAL GOVERNMENT

BY

H. D. TRAILL, D.C.L.

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PREFACE.

In order to explain the scheme and general character of this volume, it is necessary to say a few words about the series of which it forms the commencement. The *English Citizen* Series is intended to meet the demand for accessible information on the ordinary conditions and the current terms of our political life. In this, its first volume, it deals with the machinery whereby our Constitution works, and the broad lines upon which it has been constructed: in subsequent volumes it will treat of the course of legislation; of the electoral body, its functions, composition, and development; of the great scheme of national income, and its disbursement, and of various other matters; but on the present, as on every other subject, the aim has been not to give mere *compendia* of technical information, but to sum up as shortly and clearly as possible the leading points, and to arrange these so as to show their relation to one another, and their general bearing on the life and the duties of the citizen.

Fiske 1926.

To apply these principles to the treatment of a subject of such dimensions as that of "Central Govern-

ment" has not been easy. The task encounters embarrassments on two sides. The limits prescribed to the work forbade its expansion into a historical treatise on the development of our political institutions; the object proposed to the work forbade its contraction into a mere catalogue of administrative details. To maintain, on the one hand, its *explanatory* character, it was necessary to be continually referring to phases of constitutional history, and sometimes to points of constitutional law; while, on the other hand, to avoid the danger of discursiveness, it has been found equally necessary to treat these matters with an almost stenographic brevity. The necessity of conforming to these two conditions will explain and justify the limitations of the volume, both in the region of principle and in that of detail. It cannot pretend to compete with more copious and systematic treatises on the English Constitution; nor does it profess to enter with the exhaustiveness of an official handbook into the minutiæ of departmental administration. The writer's object has been to confine it as closely as possible to the points of contact between constitutional principle and administrative detail, and to give rather the political *rationale* of the various processes of government than to follow out their departmental history to its ultimate facts. It is with constant reference to this object that the present volume should be consulted; and it may thus, it is hoped, be consulted with advantage.

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CENTRAL GOVERNMENT.

CHAPTER I.

THE EXECUTIVE GOVERNMENT UNDER THE CONSTITUTIONAL SYSTEM.

THE meaning of the word "government" might at first sight appear to be free from all ambiguity whatsoever; but a little reflection on its popular employment suffices to show that it is used in at least two distinct senses. When we speak of a nation being under "parliamentary government;" and when we say that its "form of government" is monarchical, we are in fact applying the same word to two essentially different functions of its political life; as indeed is evident enough from the fact that both of these two propositions can, with equal truth, be affirmed of the country in which we live. In saying that England is a nation under "parliamentary government," we mean that the *legislative* authority—including therein the power not only of making laws, but of supervising their administration and controlling their administrators—is vested in a parliamentary assembly; in saying that the English "form of government" is monarchical, we mean that the *executive* authority—

including therein the power not only of administering the laws, but of performing all acts necessary to the work of rule—is entrusted not to an elective chief magistrate, but to an hereditary Sovereign.

The distinction which popular language thus ignores is of course a real and an important one; and though it is more plainly visible in the case of a constitutional government like our own, it is in reality a distinction which must always and everywhere exist. The executive differs essentially from the legislative function; and the one can in theory be separated from the other, even when in practice they are combined. The Oriental despot who concentrates in his own person all the powers of the State can do no more than associate the two functions in question; he cannot confound them, or merge the one in the other. He may be his own Legislative and his own Executive, but the distinction between the legislative and the executive function still remains. The edict which he may issue to-day is a thing essentially different from the order which he may give to his Vizier to-morrow to see to its execution, or from the punishment which he may inflict upon one of his subjects for disobedience to it the day after.

The distinction, however, between the legislative and the executive power is naturally more conspicuous in these forms of government in which the two powers are, as in England, committed to separate hands. Among ourselves the legislative is sharply marked off from the executive power. The former belongs to Parliament, or, to speak with strict constitutional accuracy, is divided between the Sovereign, the House of Lords, and the House of Commons; the latter is exercised by the Sove-

reign under the advice and through the instrumentality of the ministers of the Crown. And although those who make the laws of a nation, and who thus "have the last word" as to what each citizen of that nation is permitted or forbidden to do, may no doubt in a very important sense be called its "Government," that title is more generally and correctly reserved for the authority which administers or enforces such laws as exist—for the executive authority in fact, or, in other words, for the Crown acting under the advice of its ministers.

The ministers of the Crown are accordingly spoken of in ordinary usage as the Government. Sometimes, in contradistinction to the Legislative Body, they are called the Executive Government; sometimes, in contradistinction to the various depositaries of local authority, they are described as the Central Government. But in theory the executive power is vested in the Sovereign alone; and in the form taken by all ministerial acts this theory is strictly observed. Writs, warrants, commissions, patents, and other public documents of a like nature, "run" in the Queen's name: the Crown is still the visible symbol of authority under which all the actual work of government is carried on.

In earlier times, however, the Crown was not only the visible symbol, but the actual source of all executive authority; and in order to form correct ideas of the present relations of the Crown to its ministers, it will be necessary to take a brief historical survey of the process by which their relations have grown up. Down to a period, then, which it is convenient and substantially if not strictly accurate to fix at the Revolution of 1688, the government of England was carried on by virtue of

the royal prerogative—that is to say, by the Sovereign in person, with the advice and assistance of ministers selected by himself, and not responsible (in any formally recognised way) to any one save himself.[1] Under this system Parliament had nothing to say to the choice of the royal ministers, and possessed no power of controlling them when chosen. The Sovereign was of course not bound to follow their advice; but Parliament had no means of suggesting what advice they should give, or of interfering to prevent its being acted upon when it was bad. They could only complain or remonstrate after the mischief was done, or sometimes, in extreme cases, punish the mischievous advisers: they could not forbid or prevent the advice being taken. But as the nation grew in its capacity for self-government, it sought, as all-growing nations do, to limit the authority of its rulers; and the stern experience of two Revolutions taught its people the best way of compassing the object. The

[1] It is to be understood that the proposition thus broadly stated is simply a statement of *historical fact*, and that it neither affirms nor denies any particular theory of *constitutional law*. It has nothing to say to such statements as, *e.g.*, that of Macaulay, to the effect that the doctrine of the responsibility of ministers is of "immemorial antiquity;" or to this of another writer, that "it may be confidently asserted that there is no period of our history where the Sovereign could, according to the law and constitution, act without advice in the public concerns of the kingdom;" or to this of a third, "that the Crown of England has always had a Privy Council inseparable from it," which council "has always been bound to advise the Crown in every branch and act of its executive conduct." All these propositions may be true without affecting the fact that down to the Revolution period Sovereign after Sovereign did, whether constitutionally or unconstitutionally, claim and exercise the kind of authority attributed to the royal office in the text.

problem to be solved was that of limiting the royal power in practice, while at the same time avoiding the confusion and convulsion which must always attend the attempts of peoples to call their Sovereigns to direct account. The royal power, therefore, was left very nearly intact, but means were provided whereby, without any risk of collision between the Crown and the people, the abuse of this power might be prevented. In other words, the result—though not the immediate result—of the long constitutional struggle which ended in the great historic event above mentioned was to establish the three main principles upon which our system of government now rests, namely :—

(1.) That the Sovereign is irresponsible ; but

(2.) That for every act of his prerogative his ministers are responsible to Parliament ; and

(3.) That it is not only the right of Parliament, but its duty to the country, to inquire into the mode of exercise of the royal prerogative, to review the advice given by ministers with respect to its exercise, and to approve or condemn that advice as they may think fit.

The recognition of these principles of course imposes certain duties upon each of the three parties to the constitutional arrangement.

It is the duty of the Sovereign to select as his ministers such persons as enjoy the confidence of the majority in Parliament, and to retain them as his advisers, so long,[1] and so long only, as that confidence is continued to them.

[1] The last instance of a contravention of this rule was the dismissal of Lord Melbourne and his colleagues, a ministry possessing a majority in Parliament, by William IV. in 1834, and the invita-

It is the duty of the ministers so selected to court and not to evade the supervision of Parliament over their conduct; to submit all the acts of their policy at home and abroad (with no further or other concealment than the interests of the nation may sometimes imperatively demand) to the judgment of Parliament; and to accept an adverse expression of parliamentary opinion upon any important act of their administration as an implied summons to them to resign their offices as advisers of the Crown.[1]

And, lastly, it is the duty of Parliament to respect the irresponsibility of the Sovereign, while strictly insisting on the responsibility of ministers; and, while abstaining from any action which might embarrass or weaken the Executive in the discharge of its functions, to maintain a vigilant watch upon its administrative policy at home and in the colonies and dependencies of the Empire, as well as upon its conduct of the national affairs.

To trace in full historical detail the steps by which the control of Parliament over the Executive has been established would be altogether beyond the scope of

tion to Sir Robert Peel, the leader of the party in opposition, to form a Government. The new Premier, on assuming office, advised an immediate dissolution, so that the constitutional question involved in this act of Royal authority was not fully raised; but Sir Robert Peel's "persuasion" that the old Parliament, had he elected to meet it, would "so far maintain the prerogative of the King as to give the ministers of his choice not an implicit confidence but a fair trial," must be regarded, if justifiable, as somewhat restricting the generality of the proposition in the text.

[1] There are certain exceptions to this rule, which will be noticed hereafter; but they have been too rare in the past, and are too improbable in the future, to necessitate any qualification of the main proposition in the text.

such a work as this. But the principal movements by which this result has been brought about may be briefly indicated.

It has been said that before the Revolution of 1688 the government of England was carried on mainly by means of the royal prerogative—that is to say, by the Sovereign in person, with the advice and assistance of ministers appointed by himself, in whose selection Parliament had no voice, and whose conduct Parliament could not effectively control. It is true that the Commons of England had from very early times successfully asserted their right of impeaching obnoxious ministers; and it is true also that from times almost as early they had resorted to the expedient of withholding supplies of money in order to force the dismissal of such ministers from the councils of the Sovereign. But neither of these checks upon ministerial action was of assured avail. In times when the ordinary revenues of the Crown, irrespective of parliamentary supplies, sufficed for its customary expenditure, the power of stopping these supplies was not often efficacious for coercive purposes; while the mere power of punishing men who gave the Sovereign advice conceived by Parliament to be injurious to the interests or adverse to the liberties of the country, but the mischief of which, when once acted upon, might be irremediable, was but a poor substitute for the power to prevent such advice being given, or to intercept the execution of the measures founded upon it. Without investing Parliament with a power of the latter kind, it was clear that ministers of the Crown could not be effectually controlled; and experience slowly but surely proved that there was only one way of giving Parliament

the power required. To do so it was necessary that the ministers of the Crown should be either selected from among the members of the representative body, or else should be immediately on appointment provided with seats in that assembly; and this necessity was first formally recognised in the reign of William III. It is of course true that individual ministers had sometimes had seats in Parliament before this period; but it was only then, for the first time, that ministers were introduced into Parliament for the avowed purpose of explaining, defending, and carrying out the measures of government.

This, however, was not in itself enough. To carry out the responsibility principle thoroughly it was requisite not only that ministers should be members of Parliament, but that they should be persons *acceptable* to Parliament as a body; and this requirement also was first satisfied by the same monarch in appointing an administration avowedly selected from the then dominant political party, with the view of carrying on the government in conformity with the views of the majority in the House of Commons. The ministry so formed by him in 1696 was constructed upon an exclusively Whig basis; but the precedent thus created was afterwards departed from, even by the Sovereign who created it, and it was not till the House of Hanover ascended the throne that ministers were, as a general rule, selected exclusively from among those who were of the same political creed, or who, at least, were willing to serve under the same political banner.

It must not, however, be supposed that even when the "responsibility principle" was theoretically respected in the selection of ministers, it was at first as strictly

and unvaryingly observed in practice as it is in our own day. This, like other parts of our constitution, has grown up by degrees; and from the first recognition of the general responsibility of ministers to Parliament, it was a long step to the state of things which exists at present, when there is no single act of the royal prerogative for which ministers are not responsible, and no detail of ministerial policy over which the control of Parliament is not habitually, or cannot, if necessary, be effectually exercised. It was indeed a full century from the recognition of this principle before it was brought into complete accordance with the facts. At the outset of the constitutional period there were several important departments of the work of government to which parliamentary control could hardly be said to extend. This was at first the case, for instance, with the department of foreign policy, which, during the reign of William III., and with the full acquiescence of his ministers, was virtually managed by the Sovereign alone; while the first two Georges, though they left domestic affairs for the most part to their ministers, imposed upon them a foreign policy designed rather to further the interests of Hanover than those of England. We shall, moreover, see hereafter that the military administration of the country was not, till a still later date, brought effectually under parliamentary control.

These cases, however,—the direction of foreign policy, and the imperfectly checked exercise of royal prerogative in the case of the army,—were, so to speak, permitted departures from the principle of ministerial responsibility. They were practically acquiesced in by Parliament and the country; they were concessions voluntarily made to

the claims of royal authority. But the principle of parliamentary responsibility was for a long time subject to occasional violations of a different sort—violations committed by the Sovereign of his own will, and without the consent, or sometimes even against the protest of his subjects. The records of the long reign of George III. abound in examples of this sort. That exceptionally strong-willed monarch in many instances asserted his claim to overrule his ministers; and though such action might be brought within the constitutional principle on the plea that ministers who allow themselves to be overruled, and yet retain their offices, thereby accept responsibility for all that follows, the same excuse cannot be pleaded for certain other proceedings of the same king. It is a necessary condition of ministerial responsibility for every act of the Crown that the Sovereign should consult with and be guided by his ministers, and by no one else; otherwise, the right of parliamentary control would become clearly illusory. But George III., during the earlier part of his reign, was in the habit of conferring secretly upon public affairs with noblemen and others who were not members of the administration. He thus created a species of new party, which was known as the "King's friends;" and though this "influence behind the throne" was denounced by many of the leading statesmen of the day, it can be traced with more or less distinctness throughout the greater part of the reign.

But the process by which the constitutional principle gradually triumphed over these invasions of it, and attained the complete and unchallenged supremacy which it enjoys at the present day, will be more clearly traceable after we have examined into the origin and growth

of the Cabinet. Let it suffice, in concluding this chapter, to summarise as follows the results of its inquiries :—

1. The work of government strictly so called was in earlier times performed by the Sovereign himself through a simple exercise of the royal prerogative.

2. In the present day it is performed by a body of ministers belonging to the party which possesses a majority in the House of Commons, holding seats in Parliament, and responsible to Parliament for the way in which they perform the work.

3. The principle of this responsibility was first formally recognised in fact in the year 1696, and first publicly proclaimed and assented to in Parliament in the year 1711.[1]

4. For the greater part of a century it was but imperfectly observed, and parliamentary control over the ministers of the Crown continued to be in one or more respects defective; but

5. The principle is now firmly established, and the control now complete, so that there is no public act[2] of the Sovereign, whenever and however performed, for which there is not some minister or ministers responsible.

[1] By Lord Rochester in a debate in the House of Lords on the affairs of Spain, Cobbett, *Parl. Hist.*, vi. 972. And see Todd, *Parliamentary Government in England*, ii. 101—an able and careful work, which has been frequently consulted in the preparation of this volume.

[2] This is so even in the case of the dismissal of a ministry by the Sovereign, for it was laid down in 1807, after the dismissal of the Grenville Administration by George III., and fully admitted by Sir Robert Peel, in the case above referred to, in 1834, "that the incoming ministry assume undivided responsibility for the act of the Sovereign in dismissing their predecessors."

CHAPTER II.

THE CABINET: ITS FORMATION, FUNCTIONS, AND RESPONSIBILITY.

THE relations between the Crown and Parliament, as traced in the foregoing chapter, determine the first step in the process of "forming a Government."

On the resignation or dismissal of a previous ministry it is customary, as we all know, for the Sovereign to "send for" some eminent member of one or other of the Houses of Parliament, and to entrust him with the task of forming a new administration. In so doing the Sovereign must be constitutionally guided by the principles above considered. It is his duty, that is to say, to select such minister-designate from the ranks of the majority of the House of Commons, and further, perhaps (though this is a point on which some latitude of choice must naturally and necessarily exist), to fix upon that one of two or more eligible candidates for the trust who may appear the most likely to be acceptable to the majority of the party to which he belongs. But with the designation of this one person the initiative of the Sovereign is at an end. According to modern usage the Premier alone is the direct choice of the Crown; and he possesses the privilege of choosing his own colleagues,

subject of course to the approbation of the Sovereign. In the exercise of this privilege the Prime Minister then proceeds, either with or without consultation with other leading members of his party, to nominate the persons to be appointed to the various executive offices. The whole number of persons thus nominated are in strictness entitled to the appellation of ministers; while those appointed to the more important of these offices compose, either exclusively or with one or two additions, what is called the *Cabinet*. It is to this latter and smaller body that the office of advising the Crown is confined. They, and they alone, are, in the exact sense of the words, "The Government" of the country; and it is therefore one of the strangest of the anomalies of our constitution that this supreme body of royal councillors should be utterly unknown to the law, and that no one of them should, in his mere capacity of "Cabinet Minister," have, legally speaking, any right to act as an adviser of the Crown at all. Still more curious is it that their sole legal qualification for this duty should be derived from their formal membership of a council which, in its corporate capacity, the Crown has for two centuries ceased to consult. The Cabinet Minister is, as a matter of course, "sworn of the Privy Council," and advises the Sovereign, according to legal theory, in his capacity of Privy Councillor alone; while that Council itself at present takes no part whatever in this duty of giving advice, nor is in any way responsible for the advice given by those particular Privy Councillors who form the Cabinet.

The historical process by which this singular result has been brought about is thus concisely summarised by

Macaulay: "Few things in our history are more curious than the origin and growth of the power now possessed by the Cabinet. From an early period the Kings of England had been assisted by a Privy Council, to which the law assigned many important functions and duties. During several centuries this body deliberated on the gravest and most delicate affairs. But by degrees its character changed. It became too large for despatch and secrecy. The rank of Privy Councillor was often bestowed as an honorary distinction on persons to whom nothing was confided, and whose opinion was never asked. The Sovereign, on the most important occasions, resorted for advice to a small knot of leading ministers" (whose name of "Cabinet" was derived from the circumstance of their deliberations being conducted in an inner room or cabinet of the Council apartments in the Palace). "The advantages and disadvantages of this course were early pointed out by Bacon,[1] with his usual judgment and sagacity; but it was not till after the Restoration that the interior Council began to attract general notice. During many years old-fashioned politicians continued to regard the Cabinet as an unconstitutional and dangerous board. Nevertheless, it constantly became more and more important. It at length drew to itself the chief executive power, and has now been regarded during several generations as an essential part of our polity.

[1] Bacon, *Essays*, xx. On Counsel. "And as for Cabinet Counsels, etc." The passage is historically curious, not only as fixing the date of the term "Cabinet Council," but as showing that the practice of passing over the larger consultative body had begun considerably before Bacon's day, viz. under "King Henry the Seventh of England, who in his greatest business imparted himself to none, except it were to Morton and Fox."

Yet, strange to say, it still continues to be altogether unknown to the law; the names of the noblemen and gentlemen who compose it are never officially announced to the public; no record is kept of its meetings and resolutions, nor has its existence ever been recognised by any Act of Parliament."

But in order to realise the full magnitude of the change which has been effected by this singular process, it is necessary to look back for a moment upon the history of the great assembly which the modern Cabinet has thus supplanted. We may form some idea of the vast displacement of political equilibrium which this transfer of power represents, when we recall the fact that the Privy Council threatened at one period to attract to itself a supreme authority over almost every department of the national life. The King's "Continual," *i.e.* Permanent Council (as it was called, in opposition to the King's "Great Council,"[1] which was assembled only on special occasions, and which, besides the great officers of State, and the selected members of the nobility, who formed the smaller body, included a considerable number of nobles summoned by special writ), at one time exercised a more extraordinary combination of legislative and executive functions than any other political assembly in any country has perhaps ever claimed for itself. In addition to its supreme and exclusive title to the office of chief advisers of the Crown, and chief instruments of the royal will, as displayed in acts of government, it arrogated to itself for a long period an almost illimitable right

[1] This was in fact the Ordinary Permanent Council (*concilium privatum assiduum ordinarium*) and the House of Lords "blended together into one assembly."—Hallam, *Middle Ages*, iii. 143.

—or at any rate, a right limited only by protest on the part of the popular assembly—of judicial interference. Before the jurisdiction of courts of law and equity was marked out, "there was," says a well-known writer[1] on this subject, "scarcely a department of State which was not in a greater or less degree subject to its immediate control. No rank was too exalted or too humble to be exempt from its vigilance, nor any matter too insignificant for its interference." Throughout the whole of this period of its highest pretensions, however, it was watched with the greatest jealousy by the House of Commons; and our parliamentary annals, from the reign of Edward III. down almost to the opening of the constitutional era, abound in records of the vigorous attempts made by the representatives of the people to restrain the Privy Council from interfering with matters belonging to the jurisdiction of the courts of law, and from illegally infringing upon the rights and liberties of the subjects. Its judicial usurpations had been more or less effectively checked before the period of the Restoration; and it is from that date that its consultative and executive authority began to be threatened by the rise and gradual growth of the institution destined to replace it—the Cabinet Council. The older and larger body, however, may be said to have "died hard," and not without attempts on the part of political doctors to galvanise it into new life. Upon the accession of Charles II., his chancellor, Clarendon, endeavoured to restore to the Privy Council the deliberative efficiency of which its unwieldy dimensions had already deprived it; and to this end proposed its

[1] Sir Harris Nicolas, *Proceedings and Ordinances of the Privy Council*, Preface, p. ii.

subdivision into four committees, to each of which was to be assigned a separate class of subjects. But this curious experiment, in anticipation of our modern departmental system, proved a failure. So far, indeed, from establishing the authority of the Privy Council, it only served, singularly enough, to accelerate its displacement by the Cabinet; for the so-called committee of foreign affairs, which consisted of Clarendon and five others, mostly his adherents, became in reality a Cabinet, and virtually superseded the rest of the Council, who were only consulted on formal occasions.

A similar fate befel a second attempt to reconstitute the Privy Council a few years later. Sir William Temple's scheme of administration started with the dissolution of the existing Council, and the appointment of a new and smaller one numbering thirty members only, and composed partly of the chief officers of the Crown and household, and partly of leading members of Parliament chosen from both political parties. From a variety of causes, however, into which it is unnecessary here to enter, the new Council failed to obtain public confidence or to work efficiently, and the author of the scheme himself dealt the finishing stroke to it by consenting to form an interior Council therein, or in other words to revert once more to the principle of the "Cabinet," now more than ever recognised as a necessary part of the machinery of Government.

From this time forward the decline of the Privy Council from its pristine position of importance was steady and uninterrupted, and from the date of the complete and assured establishment of the Cabinet in the position of chief advisers of the Crown and administra-

tors of its powers, the Privy Council entirely ceased to hold meetings for purposes of deliberation. All that remains to it of the dignity of its ancient place in the constitution is of a merely formal and ceremonial nature. Certain of the acts of the prerogative which are advised by the Cabinet require to be done "in Council," and their performance is directed by order issued by the Sovereign at a meeting of the Privy Council specially convened for the purpose. So completely, however, have the functions of the two bodies been dissociated, that whereas the Privy Council cannot be holden except under the presidency of the Sovereign, the Sovereign cannot constitutionally preside at a meeting of the Cabinet. His presence would be as irregular at the deliberative proceedings of the latter as it is necessary to the ceremonial proceedings of the former.

But though the Privy Council has ceased to exist as a constitutional factor in the Government, it continues in existence, and has indeed developed new modes of existence as an administrative department, and also as the trustee under Parliament of certain deputed legislative powers; in both of which capacities it will be treated of hereafter.

It remains to glance briefly at the steps by which the Cabinet, after it once became recognised as the supreme consultative body, developed the precise character, attributes, and mutual relations of parts, which at present distinguish it.

It has been said that the first step towards establishing its effective parliamentary responsibility was the introduction of the King's ministers into Parliament. But it must not be supposed that the advantage of this change

was immediately recognised by those to whom this advantage accrued. On the contrary, the policy of William III. in this respect was at first regarded with jealousy. The House of Commons of that day, which had already grown impatient of the number of minor dependents upon the Crown who had found their way into its ranks, made several legislative attempts to exclude all office-holders from a seat; and finally succeeded in procuring their prospective exclusion by introducing a clause into an Act of 1700, whereby it was provided that, on the accession of the House of Hanover, no person who had an office or place of profit under the King, or received a pension from the Crown, should be capable of serving as a member of the House of Commons. But the event in contemplation did not take place till fourteen years after, and before half that period had elapsed the advantages of the presence of Cabinet Ministers in the Legislature had become so manifest that Parliament repealed the exclusory clause of its former enactment, and substituted for it the wiser provision that members accepting offices of profit from the Crown should simply vacate their seats, but should (with certain exceptions not necessary to specify here) be capable of re-election by their constituents.

From this time forth, then, we find the same relations established between Cabinet and Parliament which prevail in our own day. But the relations of the members of the Cabinet among themselves were at first very different from what now exist, and a good many years were destined to pass before things finally settled down into their present position. There are three principal points in which this process is to be traced.

1. *Political Unanimity.*—It would seem very strange to us in these days to see politicians of opposite parties sitting in the same Cabinet; yet that practice was, for many years after the establishment of constitutional government, the rule rather than the exception. The precedent created by William III. in the selection of the first party-ministry was, as we have seen, very soon departed from, and was thereafter continually set at nought. The later ministries of the same King were of a mixed character; the ministries of Anne were partly Whig and partly Tory; and the political unity which prevailed in the Walpole administration was succeeded by a return to the old practice under Pulteney. It was not till later that it became an admitted political axiom that Cabinets should be constructed upon some basis of political union, agreed upon by the members composing the same when they accept office together.

2. *Unity of Responsibility.*—As a consequence of the earlier practice of constructing Cabinets of men of different political views, it followed that the members of such Cabinets did not and could not regard their responsibility to Parliament as one and indivisible. The resignation of an important member, or even of the Prime Minister, was not regarded as necessitating the simultaneous retirement of his colleagues. Even as late as the fall of Sir Robert Walpole, fifty years after the Revolution Settlement (and itself the first instance of resignation in deference to a hostile parliamentary vote), we find the King requesting Walpole's successor, Pulteney, "not to distress the Government by making too many changes in the midst of a session;" and Pulteney replying that he would be satisfied, provided "the main forts

of the Government," or, in other words, the principal offices of State, were placed in his hands. It was not till the displacement of Lord North's ministry by that of Lord Rockingham in 1782 that a whole administration, with the exception of the Lord Chancellor, was changed by a vote of want of confidence passed in the House of Commons. Thenceforth, however, the resignation of the head of a Government in deference to an adverse vote of the popular Chamber has invariably been accompanied by the resignation of all his colleagues. They accept a common responsibility for all his acts of policy, and it is understood that a withdrawal of parliamentary confidence from him implies its withdrawal from them also.

3. *Concert in Action.*—For nearly a century after the Revolution, the Cabinet, instead of being the consentaneously acting body which it is at present, was little more than a loose cluster of mutually independent ministers, carrying on the business of the State in various departments unconnected with each other, and conducting that business under no other general superintendence than that of the Crown. There was no regular concert between ministers: the head of a department was not bound to inform his colleagues, either individually or collectively, of the measures he proposed to take; nor were there any of these periodical Cabinet Councils in which, nowadays, questions of departmental policy are brought to the cognisance, and sometimes referred to the decision, of the Cabinet at large.

The inconveniences of this system were many, but transition from it to that which now exists did not become possible until the supremacy of the Prime Minister

had become an accepted principle of our Government. It was to the want of a recognised chief that this lack of concert among the Cabinet was due; yet for a century after the Revolution there was no such recognised chief of the Cabinet even in practice; nor in theory, it may be added, is there any at the present day. Constitutionally speaking, ministers are all of equal authority as Privy Councillors, the only capacity in which they possess any constitutional authority at all; and such ascendency as Walpole, for instance, for many years enjoyed was of a purely personal character—the result of his natural capacity for rule. So far indeed was this great parliamentary leader from claiming any supremacy in virtue of his position, that he resented the title of Prime Minister as an imputation, and seemed evidently of opinion that such a functionary would be as hateful to the Englishmen of his day as Clarendon declared it to be to those of his own time. Nor, though he undoubtedly did much to raise that office to the position which it now holds, was he far wrong in his estimate of the opinion then prevailing on the subject. It was one of the complaints of the peers who moved an address to the Crown for his removal, that he had made himself "sole minister;" and though the motion was defeated, a protest was afterwards entered in the journals of the House of Lords, declaring that "a sole or even a First Minister is an officer unknown to the law of Britain, inconsistent with the constitution of the country, and destructive of liberty in any Government whatsoever;" and further, that "it plainly appearing to us that Sir Robert Walpole has for many years acted as such by taking upon himself the chief, if not the sole direction of affairs

in the different branches of the administration, we could not but esteem it to be an indispensable duty to offer our most humble advice to his Majesty for the removal of a minister so dangerous to the King and the kingdoms." But despite this protest, the office of Prime Minister continued gradually to attract to itself that "chief if not sole direction of affairs" which now belongs to it. The system of co-ordinate departmental ministers was maintained throughout the first twenty years of his reign by George III. for his own purposes: he "divided" in order to "govern;" but on the accession of the younger Pitt to power, the King was content to hand over to him the general superintending authority, which he himself had hitherto so obstinately struggled to reserve to the Crown. The supremacy which this statesman successfully asserted over his colleagues has ever since been the acknowledged right of the First Minister of the Crown; and the Constitution, as now practically interpreted, may be said to proceed uniformly upon the principle that power and responsibility should be concentrated in the hands of some one man who enjoys the confidence of the country and the majority in Parliament, and whose unchallenged authority is necessary to secure consistency in policy and vigour in administration.

The authority and functions of the Cabinet, and the mutual relations of its component members, are points of so much importance to our present subject, and the history of this body is so essentially the history of modern executive government in England, that it may be well to recapitulate the successive stages in its development, as traced in the foregoing pages.

(1.) First, then, we find the Cabinet appearing in the

shape of a small informal, irregular *Camarilla*, selected at the pleasure of the Sovereign from the larger body of the Privy Council, consulted by and privately advising the Crown, but with no power to take any resolutions of State, or perform any act of government without the assent of the Privy Council, and not as yet even commonly known by its present name. This was its condition anterior to the reign of Charles I.

(2.) Then succeeds a second period during which this Council of advice obtains its distinctive title of Cabinet, but without acquiring any recognised status, or *permanently* displacing the Privy Council from its position of *de facto* as well as *de jure* the only authoritative body of advisers of the Crown. (Reign of Charles I. and Charles II., the latter of whom governed during a part of his reign by means of a Cabinet, and towards its close through a "reconstructed" Privy Council.)

(3.) A third period, commencing with the formation by William III. of the first ministry, approaching to the modern type. The Cabinet, though still remaining, as it remains to this day, unknown to the Constitution, has now become *de facto*, though not *de jure*, the real and sole supreme consultative council and executive authority in the State. It is still, however, regarded with jealousy, and the full realisation of the modern constitutional theory of ministerial responsibility, by the admission of its members to a seat in Parliament, is only by degrees effected.

(4.) Finally, towards the close of the eighteenth century, the political conception of the Cabinet as a body,—necessarily consisting (*a*) of members of the Legislature (*b*) of the same political views, and chosen from the

party possessing a majority in the House of Commons; (*c*) prosecuting a concerted policy; (*d*) under a common responsibility to be signified by collective resignation in the event of parliamentary censure; and (*e*) acknowledging a common subordination to one chief minister,—took definitive shape in our modern theory of the Constitution, and so remains to the present day.

Having thus followed the gradual growth of our system of constitutional government up to that stage of complete maturity which it only attained towards the end of the last century, it is time to pass to the examination of its practical working. Having traced the principle of parliamentary responsibility from its primordial germ to its full development, it has now to be studied in its normal application to the conduct of our Executive Government. The question now before us may in fact be stated thus: Granting that all the functions of rule theoretically vested in the Sovereign must now be always exercised on the advice of a ministry responsible to Parliament, what provision is made in modern political practice for ensuring that the fact and the nature of this advice shall be duly brought to the notice of Parliament? and in what way is parliamentary disapprobation of this advice brought effectively to bear upon the minister or ministers responsible for it? And since the various functions of the Executive are distributed among various departments, these questions involve the further inquiry, What specific means of control over the ministers severally charged with the management of these departments does Parliament possess? The answer to this inquiry will find its natural place in the account to be given hereafter of the organisation and duties of

the various offices of State; but a few remarks may here be interposed with reference to the general question of responsibility as attaching to individual ministers.

The attention of the reader has already been called to the development of the doctrine of collective ministerial responsibility, and to its constitutional importance; but it now becomes necessary to note the qualifications to which it is subject. The soundness of the general principle is of course obvious. It is clear enough that so long as it remained possible for a ministry to evade parliamentary condemnation by "throwing overboard" some unlucky colleague, irrespectively of the question whether his acts were or were not in reason and in principle their own acts, the control of Parliament could never be effectively exercised.

"The essence of responsible government," it has been said by an eminent English statesman,[1] "is that mutual bond of responsibility one for another wherein a Government acting by party go together, frame their measures in concert, and where, if one member falls to the ground, the others almost, as a matter of course, fall with him." On the other hand, it would be manifestly as inconvenient as unjust to hold a Government collectively responsible for every administrative blunder committed by an indiscreet or incompetent minister. The rule in such matters appears to be this: that the wrongful acts of a minister in matters peculiarly concerning his own department do not involve the Cabinet at large in any parliamentary censure passed upon such acts, unless (1) they have either voluntarily assumed a share of the responsibility, or (2) are proved, as a matter of fact, to have been

[1] The late Lord Derby.

implicated in the acts censured. But in cases where the act of an individual minister, though departmental in its nature, is in such consonance with the general policy of the Government that they feel it impossible to repudiate it; or in cases where the retention of such minister in the Cabinet is deemed essential to its existence, and an object to be secured at any cost; or, lastly, in cases where the act is only departmental *in form*, and is really but a step in the execution of a plan of action already resolved upon by the Cabinet at large;—in all these cases the responsibility becomes necessarily corporate, and ministry and minister must stand or fall together.

Examples of both forms of ministerial responsibility—the individual and the collective—are to be found in the parliamentary history of the present century. The cases of Lord John Russell and the Vienna Mission in 1855, and of Lord Ellenborough and his despatch to Lord Canning, then Governor-General of India, in 1858, are instances of acts of indiscretion being visited on the heads of the individual ministers who committed them. Those of Sir James Graham and the Mazzini Correspondence in 1844, and of Lord Palmerston and the Don Pacifico Claim in 1850, are instances in which a Cabinet has identified itself with the incriminated act of an individual minister, and declared their responsibility for the same to be entire and indivisible.

Lastly, as to the particular measures by which Parliament exercises its powers of calling ministers to account: These divide themselves into ordinary and extraordinary. The ordinary form of procedure resorted to by Parliament against offending ministers is that of censure and dismissal from office; the extraordinary is that of

"impeachment" by the Commons at the bar of the House of Lords. In later times the former has been found sufficient, and it has been the long-settled practice to regard the disapprobation of Parliament and the loss of power as punishment sufficient for all errors of administration committed in good faith and without suspicion of corrupt or treasonable motive on the part of the erring ministers. It is indeed nearly a century and a half since the last attempt was made to impeach a minister for merely pursuing a policy considered mischievous by the dominant party in the House of Commons for the time being; but the much later case of Lord Melville's impeachment for alleged malversation in office shows the indisposition of the House to part with this means of punishing grave and conscious violations of ministerial duty; and it is not by any means impossible that a detected act of corruption on the part of a minister might, even in these days, expose him to a parliamentary impeachment. Indeed, if it were beyond the reach of the ordinary law, it would have to be so punished, unless the offender were to be allowed entire impunity; and this consideration, indeed, was the real origin of the process. "The times in which its exercise was needed were those in which the people were jealous of the Crown, when Parliament had less control over prerogative, when courts of justice were impure, and when, instead of vindicating the law, the Crown and its officers resisted its execution, and screened political offenders from justice. But the limitations of prerogative, the immediate responsibility of ministers to Parliament, the vigilance and activity of that body in scrutinising the actions of public men, the settled administration of the

law, and the direct influence of Parliament over courts of justice, which are at the same time independent of the Crown, have prevented the consummation of those crimes which impeachments were designed to punish."[1]

Parliamentary censure of the penal kind,—that, namely, which is followed of necessity by loss of office,—can be pronounced only through the House of Commons. A vote of the Upper House in disapproval of ministerial acts may, and indeed must, carry with it considerable moral weight; circumstances may be conceived in which its effect might so damage and weaken an administration as to lead ultimately to its downfall; but it does not amount to "censure" in the constitutional sense of the word. Nothing short of a declared withdrawal of the confidence of the popular Chamber imposes any constitutional obligation upon ministers to resign their offices. This withdrawal of confidence may be signified either by a formal resolution expressive of the fact, or by a vote conveying disapproval of certain specific acts or omissions on the part of ministers, or by the rejection of legislative measures of a certain character introduced by ministers.

The first two cases explain themselves, and with regard to the third—which is much the most usual method of pronouncing parliamentary censure—it is only necessary to note the qualifications attached to it. Not every rejection of a ministerial bill by the House of Commons, not even the rejection of an important bill by them, is regarded as equivalent to, or as intended to convey, a declaration of parliamentary censure. A mere defeat, or even a series of defeats, in the House of

[1] May, *Law of Parliament*, p. 374.

Commons upon isolated proposals[1] would not entail the resignation of a Government which had otherwise any ground for believing that its general policy still had the approval of Parliament; nor would the liberal amendment and alteration of measures introduced by ministers of necessity entail their resignation. But if a Government has declared that they regard the passing of a particular measure in a certain shape as a matter of vital importance, the rejection of their advice by the Legislature is tantamount to a vote of want of confidence, and must compel them either to resign[2] or to advise the Sovereign to dissolve Parliament, and refer the question to the country. The circumstances in which this advice may be legitimately tendered to the Crown are of various kinds, but the consideration of them belongs to another branch of the subject.

[1] Especially is this true, as will be noticed in the ensuing chapter, with respect to proposals bearing on taxation and finance.

[2] In this place is to be noticed one of those exceptions to the rule of constitutional duty incumbent upon ministers which were described in Chapter I. as of too rare occurrence to necessitate the qualification of the main proposition in the text. There have been instances, the most memorable of which is supplied by the first ministry of the younger Pitt, wherein a Government has continued to hold office in the face of repeated parliamentary defeats, while ultimately, though not immediately, meditating an appeal to the country to reverse the decision of Parliament. In Mr. Pitt's case the course adopted was justified by results; but it is clear that the assumption that a representative body has ceased to represent, and that its decisions may, without any immediate appeal against them, be simply ignored, is one which ministers should be very chary of making. If lightly resorted to, the Constitution would be practically set aside.

CHAPTER III.

THE TREASURY.

It has been pointed out in the previous chapter that just as "the Cabinet" has no recognised legal existence, so there is no such official known to the language of constitutional law as a "Prime Minister." Supreme as is the authority which the so-called "Premier" has in course of time established over his colleagues, and complete as is their subordination to him, he is in theory only one among other ministers of the Crown, and his sole official title is derived from the department over which he nominally presides. This department is nowadays the Treasury, and the office of First Lord of the Treasury has been held by the Prime Minister, either alone or in conjunction with another, ever since the year 1806. His position, however, in relation to the internal economy of this department is rather that of honorary president than of working chief; and he is usually too much occupied in considering questions of the general administrative and legislative policy of the country to have time to attend to the departmental business of the office. This business is principally transacted by the other members of the Treasury Board, an institution to whose historical origin it will here be convenient to devote a few words.

The full official description of the persons who constitute this Board is that of "Lords Commissioners for executing the office of Lord High Treasurer," the said persons being the First Lord of the Treasury, the Chancellor of the Exchequer, and three other officials known as "Junior Lords."

The Lord High Treasurer was anciently the sole head of the Treasury, and the most powerful minister in England. For more than a century and a half, however, this high office has been placed, as it is called, "in commission." The Duke of Shrewsbury had been appointed Lord High Treasurer by Queen Anne a day or two before her death; but George I., a few months after his accession, nominated Lord Halifax and four other persons "Lords Commissioners for executing the office of Lord High Treasurer," and the office has continued in commission ever since. The Treasury, however, has undergone the same sort of centralising process as the Cabinet; for while the Commissioners appointed in earlier times for the execution of this office were, it would seem, of co-ordinate authority, and nominated by the Crown, they have ever since 1715 been appointed by, dependent upon, and subordinate to, the First Lord. For a considerable time, however, they continued to take a real and active part in the administrative business of the department; and it was only by degrees that their offices declined into the virtual sinecures which (in a departmental, though by no means in a parliamentary sense) they have now become. The Treasury is still a Board of Commissioners in name, and the patent under which the members of the Board are appointed still represents them as being of equal authority, with powers to any two or more of them

to discharge the functions of the whole. But the Treasury has long since ceased to be a Board in anything but name: it is now practically a department presided over by a single head, the Chancellor of the Exchequer.

To trace the long and curious history of this ancient institution would lead us too far afield. It must suffice to say that the Exchequer was a branch of the old *Curia Regis*, which, besides exercising a peculiar legal jurisdiction, now merged in the general judicial system of the country, combined in itself all those various functions of collection, custody, disbursement, and account of revenue, which are now distributed among a variety of officials and departments. On its "receipt side," as it was called, it received payment of all the royal dues and imports payable by the local officers appointed for the collection of the same; on its "account side," it recorded and checked the payments made for the service of the Sovereign and the State—fulfilling in the former capacity the duties now discharged by the Comptroller (and Auditor-General), with the assistance of the officials of the Bank of England, and in the latter capacity the duties now discharged conjointly by the (Comptroller and) Auditor-General and the working staff of the Treasury. Of this institution the Lord High Treasurer was originally the real as well as the nominal head. If his high office of State did not include that of Treasurership of the Exchequer (as was believed by the most learned of the writers on this subject), the two posts seem at anyrate to have been invariably combined, and the latter is of more ancient date than that of Chancellor of the Exchequer. This official was, it is supposed, originally appointed to act as a check upon the Treasurer, and is first met with under Henry

III. In the eighteenth year of that monarch's reign, one John Maunsell was appointed (by writ directed to the Treasurer) to "reside at the Exchequer of Receipt, and to have a counter-roll of all things pertaining to the said receipt," and the Treasurer was thereby commanded to admit him accordingly. This is conjectured to be the appointment of the first Chancellor of the Exchequer, and a document of a little later date expressly shows this office to be then in existence. In a writ of the 33d Henry III., mention is made of *Cancellarius de Scaccario.* Appointments continued to be made to this office, and Chancellors of the Exchequer continued to act as assistants to or checks upon Lord High Treasurers until the office of the latter functionaries was put into commission, when the Chancellor of the Exchequer became, as we have seen, one of the Commissioners for executing it.

We have now to trace the change by which this minister has gradually concentrated the collective authority of the Treasury Board in his own hands. Originally, when the business of the Treasury was much smaller than it is at present, it was really transacted by the Board, in presence of the Sovereign. The First Lord, the Chancellor of the Exchequer, and the Junior Lords, used to sit at the table; the secretaries attended with their papers, which they read, and the Sovereign and the Lords gave their opinions thereon, the secretaries taking notes of the proceedings, which were afterwards drawn up in the shape of minutes, and read at the next Board meeting. The increase of business, however, during the later years of the last century rendered it impossible to dispose of the business of the Treasury in this way; and it then came to be transacted on the principle of indi-

vidual responsibility. Papers were still read and passed at Board meetings, to preserve regularity and to comply with the directions of certain Acts of Parliament; but the Board soon ceased to be a reality. The business was transacted by the junior members, the secretaries, and the permanent officials, under responsibility to the Chancellor of the Exchequer and the First Lord of the Treasury. Then after a time these functionaries ceased to meet the Board, except on extraordinary occasions; and some thirty years ago the Board itself ceased to meet. The Junior Lords of the Treasury are virtually set aside, and have no regular departmental duty to perform, except of a mere routine description, such as signing documents for which their signature is legally necessary; and the real business of the department is transacted by the secretary and the permanent officials, under the direction and control of the Chancellor of the Exchequer.

It was the ancient duty of the Lord High Treasurer, or of the commissioners for executing his office, to "provide and take care of the King's profit;" and the Treasury, with the Chancellor of the Exchequer at its head, discharges, as the successor to this duty, exceedingly extensive and important functions.

They are :—

(1.) To provide the means of meeting the necessary yearly expenditure on the military, naval, and civil services of the nation.

(2.) To exercise a certain control and supervision (the nature of which will be shortly indicated) over the amount and details of that expenditure.

(3.) To revise and regulate the internal or domestic expenditure of the other public offices of the State; and

generally to exercise such a superintendent authority over the financial management of these offices as is implied in these revisory and regulative powers.

(4.) To decide upon appeals from its own subordinate departments, in all cases arising out of the receipt of revenue; and

(5.) To determine as to the remission of fines and forfeitures to the Crown.

It is, however, the first of these duties—that, namely, of introducing what is called "The Budget"—with which the name and office of the Chancellor of the Exchequer is most familiarly associated; and it will here be convenient to give a brief explanation of this important constitutional proceeding.

But before considering the mode of raising the funds required for defraying the annual expenditure of the State, it would be only natural to inquire how the amount of that expenditure is determined. The two operations, though both alike of a financial nature, are obviously quite distinct; and though each is performed by the whole House of Commons, the Committee into which the House resolves itself for each purpose is described in each case by a distinct name. It is in what is called "Committee of Supply" that the House determines what sums of money are sufficient to meet the annual expenditure of the State, and votes them as "supplies" to the Crown for employment upon that object; it is in Committee of "Ways and Means" that it considers and approves the means suggested for raising, by taxation or otherwise, the sums required.

The first step in the former process is the "presentation of estimates." Shortly after the meeting of Parlia-

ment and the opening of the Committee of Supply, the ministers in charge of the naval and military services lay before the Committee their respective statements of the sums which will be required for the maintenance of those services; and somewhat later in the session a common estimate for the various civil services is submitted also. These estimates are presented to the House, it should be noted, *on the collective responsibility of the whole Cabinet.* It is the duty of the heads of the respective departments to which they relate to explain such matters to the Committee as may satisfy them of the correctness of the calculations relied upon, and formally to move that the sum required for each item of expenditure should be voted; but the Cabinet, as a whole, is responsible for the demand. Indeed, the Army and Navy Estimates have, as a rule, been considered and settled in Cabinet Council before being submitted to the House; and the collective responsibility of the ministry is in this case, therefore, not technical merely, but substantial. But the Chancellor of the Exchequer, over and above his share in this common responsibility, has in his Departmental capacity a special concern in this matter. It is his duty to satisfy himself that the estimates have been framed with due regard to economy; and though the heads of the military and naval departments must necessarily have entire freedom of judgment as to the needs of their respective services, it would still be the duty of the Chancellor of the Exchequer to disallow any expenditure which he might think unnecessary or inordinate, and in the event, which rarely happens, of an item being pressed, in the face of the objection of the Treasury, to oppose it in the Cabinet.

In order to a more effective exercise of this control, a

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circular is, in the autumn of every year, addressed by the Treasury to the various departments of the Government, including the naval and military establishments, requesting that, by a certain date, an estimate of the sums required by the particular department for the service of the current year may be prepared for the information of the Treasury. The estimates are called for thus early in order to afford time to the Chancellor to examine them thoroughly, with two distinct objects in view—one, that of keeping down expenditure within legitimate limits, and the other, that of ascertaining as early as may be how much expenditure within these limits it will be his duty to provide for.

Suppose, then, that the estimates for the various services have been duly examined and approved, the Chancellor of the Exchequer has now to consider how the demands of these estimates are to be met. The first question of course is, whether the income of the State for the ensuing year will be sufficient to cover them, or, if not, how far it will fall short of their amount. The next step, therefore, is to ascertain what the next year's income of the State may be expected to amount to; and with this object the Chancellor of the Exchequer obtains from the permanent heads of the revenue departments their estimates of the public revenue for the ensuing year upon the hypothesis that taxation will remain unchanged.

Let us now first assume that these estimates, on a comparison with the estimates of expenditure, are found to exceed them by a more or less considerable sum. In this case there is said to be a *surplus*—a word which, it must be noted, is as a rule used in a *prospective* sense in

finance, and as meaning not the national balance in hand after payment of national charges, but simply *excess of estimated revenue over estimated expenditure.* Should this excess of revenue be considerable, the Government will, as a rule, decide that the greater portion of such excess shall not be collected at all, but that taxation to the extent of that amount shall be remitted. In such a case it would be for the Chancellor of the Exchequer, in the first instance, to make choice of the particular imposts which he considers should be abolished or reduced; and when his selection has been approved by the Cabinet, all is ready for the introduction of his budget. Accordingly, at or soon before the close of the financial year (the national accounts being made up on the 5th of April), he submits to the House of Commons a general statement of the results of the financial measures of the preceding session; he gives a general view of the expected income and expenditure for the ensuing year; and having thus made the House acquainted with the amount of the expected surplus at his disposal, he indicates the particular remissions of taxation by which he proposes to dispose of it. These proposals, after all questions which may be put with respect to them by members of the House have been answered by the Chancellor of the Exchequer, are then embodied in resolutions; and these resolutions, when afterwards reported to the House, form the ground-work of bills for accomplishing the contemplated changes. The House can, of course, either express disapproval of the budget as a whole, or oppose, and perhaps reject, any one of the resolutions which accompany it. Ministers have, on not a few occasions, suffered defeats of this kind; and it depends upon circumstances,

which will be briefly considered hereafter, whether in such a case they would deem it proper to submit to their defeat, and withdraw or modify their condemned proposals, or treat the adverse vote of the House as a withdrawal of its confidence, and resign their offices.

If, on the other hand, a comparison of the estimates of revenue and expenditure discloses an excess of the latter over the former, the Chancellor of the Exchequer will, of course, have not a *surplus* to dispose of but a *deficit* to make good; and he will have to devise means of meeting it, whether by loan or by increased taxation. If the latter expedient is, as usually happens, adopted, he will have to consider what existing taxes should be augmented, or what new taxes imposed; and, after obtaining the approval of the Cabinet to his proposals, he will submit them as before, along with his general financial statement, to the House of Commons. There they will be subjected to the same criticism, and, if not regarded as a satisfactory mode of meeting the deficit, they may be set aside in favour of alternative schemes, or they may be simply rejected out of hand. The House is in no way bound to grant the demands of a Government for the means of meeting a deficiency, although, of course, the unqualified refusal of such a demand, without the suggestion of any alternative, would be equivalent to a vote of "no confidence" of the most emphatic kind.

Should the national accounts disclose a surplus of only trifling amount, it would probably be left undisposed of, as a margin against possible error in the estimates of expenditure or of revenue; and in this case, as also in the case of an absolute equilibrium being established between expenditure and revenue, the duty of the Chancellor of

the Exchequer will be confined to the proposal of such re-adjustments of taxation—such transfers of taxes, that is to say, from one class of taxpayers to another—as he may conceive to tend to a more equitable distribution of public burdens, or to conduce, by the relief of particular industries, to the increased prosperity of the country. But in all cases where the surplus is considerable, it would, as a general rule, be the duty of the Chancellor of the Exchequer to dispose of it, and of the House of Commons to see that he does so; for the effect of a budget is to satisfy Parliament not only that the public income to be raised for the current financial year will be sufficient, but that it will be no more than sufficient, to meet the expenditure which the Government propose to incur within that year. To raise more revenue than is required is simply to lock up in the Exchequer so much money that might, to the greater advantage of the country, have been left to "fructify," as the phrase is, "in the pockets of the people."

Thus far, however, we have been dealing only with *proposals*,—with proposals on the one hand to spend so much money, and on the other hand to raise so much money; and we have now to consider the process by which the actual payments into and out of the National Exchequer are effected. The *local* details of the collection of revenue are obviously foreign to the subject of this volume, and the public moneys cannot be held to come within the scope of its inquiries until they are actually lodged in the coffers of the Central Government. These moneys, which consist partly of the hereditary revenues of the Crown (now surrendered to the control of Parliament in exchange for the Civil List), and partly

of the proceeds of taxation, are nowadays all alike paid into the Banks of England and Ireland "to the account of the Exchequer," and constitute one common fund known as *the Consolidated Fund.* It is out of this fund that the payments for the services of the country are, upon proper authority, made; and the nature and conditions of this authority next claim consideration.

It is of two kinds: one of a permanent character, and the other dependent upon periodical exercise of the power of Parliament; and more than half of the money is dealt with under authority of the former kind. About three-fifths of the whole annual expenditure is made under the express direction of Acts of Parliament, and these payments can be made, therefore, without the sanction of a special parliamentary vote. The interest on the National Debt, the sums payable for the Civil List, annuities to the royal family, pensions, certain salaries and allowances, the expenses of the courts of justice,—these, together with certain other charges, unnecessary to enumerate, are imposed by permanent statute upon the Consolidated Fund; and these statutes are, of course, a sufficient authority to the custodians of the Fund to make the several payments required. The principle represented in this procedure is that the security of the public creditor, the dignity of the Crown, the independence of judges, etc., are objects of public concern; and that these objects would be imperfectly attained if the payments above enumerated were subjected to the uncertainty of an annual vote.

But as regards the remaining two-fifths of the expenditure, which includes interest on the *unfunded* debt, the maintenance of the naval and military forces, the

expenses of the collection of revenue, and the charges of the various civil services, no payments can be made under these several heads except on the authority of express parliamentary votes.

The process, however, by which this authority is obtained is a somewhat complex one, and the various forms and securities by which the outgoings of the public Exchequer are constitutionally regulated are elaborate enough to require a few words of detailed explanation.

The mode in which the sanction of Parliament is obtained for the various proposals of expenditure submitted by ministers in their estimates has already been explained in the brief account given above of the proceedings in Committee of Supply; but another process is necessary before this parliamentary sanction can be made practically available by the Executive. A vote in Supply is a mere resolution of the House of Commons that certain sums of national money shall be appropriated to certain national purposes; it gives no authority to the Government to draw upon the Exchequer, nor to the custodian of the revenues—the Comptroller of the Exchequer—to make any payments or advances thereout. Such a resolution merely authorises the expenditure, but does not provide the means of making it. To make this provision the functions of another committee—the Committee of Ways and Means—require to be called into play. Accordingly, as soon as the votes on account of the great services have been "reported," a resolution is proposed in Committee of Ways and Means for a general grant out of the Consolidated Fund "towards making good the supply granted to Her Majesty;" and the principle of parliamentary control is so strictly respected

that the grant is never allowed to exceed the amount of the votes actually passed in Committee of Supply. Even then, however, the process is not constitutionally complete, for the Constitution requires the assent of the Crown and the House of Lords to the appropriation of public moneys; and the resolution of the Committee of Ways and Means has therefore to be embodied in a Bill, which passes through its various stages, and at a very early period of the session receives the royal assent; at which time, but not before, the Treasury acquires full power to direct an issue out of the Consolidated Fund to meet the payments authorised by the votes in supply, or, if that Fund be insufficient, to raise by Exchequer Bills, on the security of the Fund, the money required to defray the expenditure sanctioned by such votes.

Such being the mode in which the Treasury obtains power to draw out and apply moneys, it only remains to consider the forms which have to be observed by the officials in whose charge those moneys are placed.

The head of the Exchequer—the Comptroller and Auditor-General—is an officer combining two functions which were formerly distinct, and who, as indeed the nature of his duties demands, is altogether independent of the Treasury. In order to justify this official in issuing moneys to the Government, he must of course satisfy himself that a Ways and Means Act of the kind already described has been duly passed, and that it covers the amount of money for which application is made. There must, moreover, be presented to him one or more royal orders authorising the Treasury to apply the supplies granted to the Crown by the Ways and Means Act covering the same, in conformity to the

parliamentary vote. This done, he grants to the Treasury, on its application, a general credit on the Exchequer accounts at the Bank of England to the amount limited by the votes; and the Treasury, operating upon that credit, issues orders to the Bank to transfer money to the account of the Paymaster-General, by whom it is paid out, as required, to the different services.

Thus far of the processes by which the national revenue is applied to the requirements of national expenditure. To follow the application of the money, and minutely to trace the various and elaborate arrangements of check and audit which have succeeded to the simple machinery of the old "Exchequer of Account," would lead us into an inquiry too extensive for a work of this kind. But though these departmental details of the process of national book-keeping may properly be regarded as beyond the range of this volume, it would be an omission in any account of "Central Government" to pass over the main constitutional provision for enabling the Legislature to supervise the application of the moneys which it votes to the Executive.

The mode of granting supplies in the House of Commons, and the further steps necessary to give effect to this grant, and to authorise the issue of money from the Exchequer, for the expenses of the various services have been already described; and it has been observed that the issues of money authorised by a Ways and Means Bill, is never permitted to exceed the total amount already voted in Committee of Supply. But, this alone would be but an imperfect check on the dealings of ministers with the national revenues. The House of Commons having, for instance, voted (say) £5,000,000

on the 6th of March for the Army, £5,000,000 on the 13th of March for the Navy, and £5,000,000 on the 20th of the same month for the Civil Service, a Ways and Means Bill is passed on the 30th, empowering the Exchequer to issue £15,000,000. Here, though the sum does not exceed the total of the various supplies voted, it is clear that if the Government were able to apply £7,000,000 instead of £5,000,000 of it to the Army, and £6,000,000 instead of £5,000,000 to the Navy, leaving only £2,000,000 for the Civil Service; and if they could repeat or vary the operation in respect of subsequent grants of supply, the intentions of Parliament might be altogether defeated, and its control over public expenditure rendered virtually illusory. It is, in other words, essential to the efficiency of such control that Parliament should possess the power of following its grants into the hands of the Executive, and of taking care that these grants are employed for the specific purposes for which they were intended, and in the intended proportions. This object is attained by the annual passing of what is known as the Appropriation Act—a measure which is the statutory expression of the constitutional principle that "the sums granted and appropriated by the Commons for any special service are to be applied by the Executive Power only to defray the expenses of that service." This rule, there is authority for believing, is one of ancient recognition in our constitutional system; but it was not till after the Restoration that it was distinctly formulated and partially enforced, nor till after the Revolution of 1688 that it found embodiment in express parliamentary enactment. A statute of the first year of William and Mary contains appropria-

tion clauses relating to the supplies voted in that year; and thenceforth it became the settled practice that the sums granted by the House of Commons for the current service of any given year "should by a special appropriation, either in the Act for levying the aid, or in some other Act of the same session, be applied only to the services which they had voted."

We are now, then, in a position to review the whole process of granting money to the Executive for the various services, and of finally ensuring the application of the several grants for each service to their respective purposes. First, and in the manner above described, certain sums of money are voted for certain services in Committee of Supply. Upon these is founded a Ways and Means Bill, authorising the issue of the sums specifically for such purposes from the Exchequer, and when issued they are entered to the credit of these services in the accounts of the Paymaster-General. This functionary is then legally warranted in applying all "moneys in his hands to the general expenditure, without reference to the Exchequer credits from which the moneys have been transferred," provided of course that the service to which he applies any money has been voted by Parliament, and that the vote be not exceeded. But the last grant of Ways and Means to cover the last vote in supply for the session is made in the Appropriation Act; in which enactment all the previous grants are enumerated, and each having been appropriated to its specific service, the whole series is covered by a clause providing that "the said aids and supplies shall not be issued or applied to any use, intent, or purpose other than those before mentioned, or for the other payments, etc., directed to be

satisfied by any Act of Parliament, etc., of this session." The Act, however, contains a provision to the effect that the expenditure for the Army and Navy Services shall be confined to those services respectively; but that "if a necessity shall arise for incurring expenditure not provided for by the sums appropriated for the said services, and which it may be detrimental to the public service to postpone until provision can be made for it by Parliament in the usual course, application shall be made to the Treasury, who are empowered to authorise such additional expenditure to be defrayed out of any surpluses which may have accrued by the saving of expenditure upon any votes within the same department; provided that the House of Commons shall be duly informed thereof, in order to make provision for such deficient expenditure as may be determined; and provided also that the aggregate grants for the Army and Navy shall not be exceeded."

The control of Parliament over the expenditure of public money being thus rendered as complete in detail as it is in gross, it is natural to inquire how the exercise of so rigorous and minute a restraint can be made consistent with the always varying needs and often recurring emergencies of the public service. How, it will be asked, is a Government to provide for expenditure suddenly necessitated by cases like these, and the necessity for which may arise at a time when Parliament is not in session, and there is consequently no possibility of obtaining even the sanction of a vote in Supply, to say nothing of the more precise authority of an Appropriation Act? The answer to this is, that the Legislature has already created certain permanent funds applicable to

such contingencies, and the Executive is invested with permanent statutory powers of resorting to them. To meet the needs of the public service, more particularly in the colonies and at the various naval and military stations of the empire, the Government is authorised to make advances, as occasion arises, out of a fund called the Treasury Chest Fund, which, by the Act 24 and 25 Vict. c. 127, is limited to £1,300,000, and assigned for employment by the Treasury as "a banking fund for facilitating remittances, and for temporary advances for public and colonial services, to be repaid out of the moneys appropriated by Parliament, or otherwise applicable to those services." There is also another and smaller fund, called the Civil Contingencies Fund, limited to £120,000, on which the Treasury is empowered to draw from time to time to defray new and unforeseen expenditure for civil services at home, for which no votes had been taken, or to meet deficiencies on ordinary votes. Every advance made from these funds must, however, be repaid out of the parliamentary votes passed in the ensuing year to provide for the services for which such advances had been made; and no expenditure whatever is allowed to become a final charge upon these funds, which are thus, after each successive call is made upon them, restored to their statutory maximum.

The restraints and privileges which have been discussed in the foregoing pages have reference to the Treasury only in its capacity as superintendent of the actual work of administration, and for that purpose an expender of public money; but the Treasury exercises, it has been said, a function of scarcely less importance than that of directing the national outlay, in scrutinising, checking,

and confining within economical bounds, the domestic expenditure, as it may be called, of the various departments. The Chancellor of the Exchequer, in other words, is not only the head, so to speak, of the national counting-house,—he is the housekeeper of the national household. The control of the Treasury over the other departments of State rests not only upon long usage and tradition, but on express recommendations of Parliament, and indeed on the economical principle that there ought to be one authority responsible to Parliament for every act of internal departmental expenditure. Accordingly we find a constant and minute supervision exercised in the name of "My Lords" of the Treasury over all the pecuniary incidents of the management of the various public offices. A "minute of the Treasury" is required for the sanction of any changes in the *personnel* of their working staff, or any redistribution of their duties which may involve the outlay of public money; and it is the custom to append to the annual estimates any correspondence which may have taken place between the Treasury and other departments upon any questions connected either with their internal or external expenditure which may be deemed sufficiently important to be brought under the notice of Parliament.

The parliamentary responsibility of this department is, as becomes its importance, provided for with exceptional completeness. Its working chief, as has been said, belongs as a matter of course to the Lower House of Parliament, and can therefore be called to account by interrogation or motion with respect to all matters of Treasury concern, which, as we know, include a variety of questions that may arise in any of the other depart-

ments of the State, and may in fact be said to cover the whole sphere of the discipline and economy of the Executive Government. And not only does the invariable presence of the Chancellor of the Exchequer in the House of Commons make the representation of this department peculiarly direct, but, through the Secretary of the Treasury, and, with respect to certain departmental matters, through the Junior Lords, the House possesses peculiar facilities of ascertaining and expressing its opinion upon the details of Treasury administration. This is especially the case as regards the Secretary of the Treasury, whose functions have greatly increased of late years, and whose office has now become perhaps the most important of any not included in the Cabinet. These officials, however, do not of course relieve their chief of any share of his official responsibility; nor would they do so, indeed, if they constituted the sole representatives of their department in the popular House, instead of being mere attendants therein upon their chief.

A word should be said here as to the constitutional position of such officials in general. An Under Secretary or other subordinate minister must be regarded as being merely the mouthpiece of his superior officer, and as only responsible for giving effect to the instructions of his chief, and for personal good behaviour. The political head of the department is alone responsible to Parliament. This proposition is substantially true, even in those cases in which an Under Secretary represents his department in one House, while his chief sits in another. It is true that an Under Secretary or a Vice-President, who is in this position, and is required to take a prominent part in public affairs, "is naturally supposed to have

a share in the government of the department, and cannot absolve himself from a certain modified responsibility in regard to it;" but a "much greater responsibility attaches to the departmental chief whose directions the subordinate officer is obliged to carry out, and whose authority is supreme." On the whole, in short, it may be said with practical accuracy, that the head of the department is "alone" responsible; and that however influential a position his subordinate might occupy in virtue of his representing that department in the House of Commons, it is doubtful whether he could in any case become *constitutionally bound* (although, of course, he might personally prefer) to accept a parliamentary censure on a point of departmental policy as applicable to himself as well as his chief. That such censure can ever apply to himself alone, and to the exclusion of his chief, may be confidently pronounced impossible; the only (apparent) instance to the contrary will be dealt with in its proper place.

The position of these subordinate officials must be borne in mind in noting what may be said hereafter on the subject of departmental responsibility. In cases where the head of a department is usually or frequently a member of the House of Lords, the parliamentary responsibility of that department is in common parlance spoken of as being provided for by the presence of this or the other departmental official in the House of Commons. Nor does there seem any objection to the expression, so long as we take care not to forget that such officials represent not the principle of responsibility, but an incidental part of the machinery for giving effect to that principle; that their position is that of mere

intermediaries between the chiefs of departments and the popular assembly to which these chiefs are responsible, keeping the House duly informed of all that the minister has done, explaining and justifying his proceedings when necessary, and receiving vicariously the censure or the approval which the House thinks proper to pronounce thereon.

In the case, then, of the *internal* administration of the Treasury, whether in its dealings with its subordinate departments of revenue, or as regards the exercise of its economical supervision over the other offices of the State, the sole responsibility rests upon the Chancellor of the Exchequer. In respect of the *general financial policy* proposed by this official, he shares responsibility, as has been said, with the Cabinet at large. And as regards this policy, it should here be noted that a somewhat wider latitude of submission to parliamentary disapproval, without resigning office, is allowed to ministers in respect to questions of taxation and finance. The doctrine laid down on this point by more than one eminent political authority, and generally accepted as sound, is, that questions of taxation "are questions upon which the House of Commons, representing the country, have peculiar claims to have their opinions listened to, and upon which the Executive Government may very fairly, without any loss of dignity,—provided they maintain a sufficient revenue for the credit of the country and for its establishments,—reconsider any particular measure of finance they have proposed." This, however, as indeed is to be inferred from the proviso with which Lord John Russell qualified the above remarks, applies only to the questions of "ways and means," and not to "questions

of supply." A Government, in other words, may legitimately submit to the rejection of a proposal to raise a particular sum of money in a particular way; but they cannot acquiesce in a refusal on the part of Parliament to sanction the expenditure which ministers have assumed the responsibility of declaring necessary for the support of the Civil Government, and the maintenance of the public credit at home and abroad. "No Government," says one of the greatest of authorities on financial administration, "could be worthy of its place if it permitted its estimates to be seriously resisted by the Opposition; and important changes can be made therein only under circumstances which permit of the raising of the question of a change of Government."

CHAPTER IV.

THE HOME OFFICE.

THE administrative department, which in antiquity and importance stands next for consideration, is that presided over by the Home Secretary. This minister is one of five high officers, whose full constitutional title—that of Her Majesty's Principal Secretaries of State — and whose peculiar dignity and powers, it will need a brief historical retrospect to explain. A review, moreover, of the causes which led to the successive appointments of these officers will incidentally throw a light, not only upon the formation of the particular departments of State over which they preside, but upon the origin and growth of others also.

At the time when Clarendon constructed his scheme the Principal Secretaries of State were functionaries of gradually increasing importance, but their office had only risen by slow degrees to that position. The full dignity of its title had only been accorded to it about the middle of the previous century, for in earlier periods the holders of this post were not only not styled "Secretaries of State," but were not even described as secretaries at all. "King's Clerk" was the earliest title of the functionary known later as "King's Secretary," and later still as His Majesty's Principal Secretary of State. The first of

these titles was the one in sole use down to the reign of Henry III. Until the middle of that reign there is no mention of "King's Secretary," while in the Close Rolls of John and Henry III. there is frequent mention of a King's Clerk. It is in a State paper of the 37th of Henry III. that we first meet with the appellation "King's Secretary" as applied to John Maunsell,[1] who is, by the instrument in question, appointed envoy to negotiate a matrimonial alliance between England and Spain. From this and similar incidents it is to be inferred that the King's Secretary frequently enjoyed the confidence of his Sovereign in a very high degree; but the trust reposed in him was strictly personal, and unless he also happened to have a seat in the Privy Council he played no recognised or responsible part as adviser of the Crown. John Maunsell himself was a Privy Councillor, as were also several succeeding secretaries, but it is impossible for many years after to regard the more or less frequent grant of this dignity as any proof of increasing importance in the office. It is possible that particular secretaries may have been appointed Privy Councillors as a reward of their special services, or for the better utilisation of their personal abilities, without its being thereby implied that the office had grown in importance, or that a seat in the Council had become essential either to the dignity or the efficiency of its functions.

But be this as it may, it is not till the reign of Henry VIII. that the association of the King's Secretaryship with a seat in the Privy Council became invariable. In this same reign, moreover, we find the office for the first

[1] See previous chapter for the appointment of this same personage to be (as is believed) the first Chancellor of the Exchequer.

time divided. Henry VIII. found it necessary, in 1539, to appoint a second principal secretary, of equal powers and like duties with his colleague. By the terms of their appointment they were "to keep two seals, called the King's Signets, to seal all warrants, writings, etc., *both for inward and outward parts*,[1] as had been accustomed." Both were also "to keep registers, and each to have access to the other's register." The delivery of these seals from the hand of the Sovereign to the two officials was the sole formality of appointment, as indeed it continues at the present day to constitute a valid and sufficient delegation of the secretarial powers, though it is now customary to confirm the appointment by the subsequent grant of a patent. What was probably the earliest instance of the issue of this instrument in such a case occurs in the reign of Mary, in 1558.

Between the date of Henry VIII.'s appointment of a second secretary and the accession of Elizabeth, the number of these officials seems to have varied. In the last month of Edward VI.'s reign, for instance, there seems unquestionably to have been three, while in the early days of his successor's rule we find the number reduced to one. Whether, in the case of there being two or more holders of the office, they were all members of the Privy Council, we have no precise means of ascertaining. Henry VIII. seems usually to have left one only to sit in the Council during his absence from London, and to have retained the others in attendance on his person.

[1] This provision seems to show that even from the date of their appointment the two secretaries had concurrent cognisance both of foreign and domestic affairs,—that *each*, in short, was a Home Secretary and Foreign Secretary in one.

As a Privy Councillor the King's Secretary would, of course, share all the ordinary responsibilities of members of that body; but he continued for some time after this to be nothing more than a servant of the Sovereign, answerable to his master, and to no one else, for the faithful performance of his duties. It is under Elizabeth that we first find him receiving a title which implies something more than personal service of the Sovereign, and it is Sir Robert Cecil who seems first to have been described in documents of royal signature as "Our Principal Secretary of Estate." But that the title had not then (41st of Elizabeth) become a regular one is evident from the fact that in a later State paper than that in which Sir Robert Cecil is described as above, his style is that simply of "Our Principal Secretary." The then position and dignity of the office may be advantageously studied (of course with certain deductions for claims peculiar to the individual as distinct from the post) in the curious tract from the pen of Cecil himself on the "Office of a Secretary of Estate." It is especially interesting as showing not only the highly confidential character of the relations between the Sovereign and his Secretary of State, but the wide discretion which, especially in matters of foreign policy, this famous statesman conceived to be intrusted to him. It is, moreover, incidentally of value as establishing the fact that the grant of a patent was originally no part of the formalities of appointing a Secretary of State. "All officers and counsellors of princes," says Cecil, "have a prescribed authority by patent, by custom, or by oath, the Secretary alone excepted; but to the Secretary, out of a confidence and singular affection, there is a liberty to negotiate at

discretion at home and abroad, with friends and enemies, all matters of speech and intelligence. All servants of princes deal upon strong and wary authority and warrant, in disbursements as treasurers, in conference with enemies as generals, in commission for executing offices by patent and instructions, and so in whatever else: only a Secretary hath no warrant, no commission, no, not in matters of his own greatest danger, but must rely on the word and integrity of his Sovereign. For such is the multiplicity of actions and variable motions and interests of foreign princes and their daily practices, and in so many parts and places, as Secretaries can never have any commission so long and universal as to secure them."

It would, nevertheless, appear from a passage in Clarendon[1] that the Secretaries of State under James I. filled by no means so important a position as had been assumed by the great minister of Elizabeth. From this period, however, the office grew steadily in consideration, but it was not until after the Revolution of 1688, and the transfer of power from the Privy Council to the Cabinet, that the Secretary, or rather Secretaries of State (for there were then two in existence exercising co-ordinate powers), began to take the very high and responsible position which they now occupy. In the year 1708, in consequence of the increase of public business consequent upon the union with Scotland, a third secretary was appointed for the special management of Scotch affairs; but this office was subsequently abolished, and, as the result of a variety of changes which will be duly noticed in their proper place, the number of Principal Secretaries of State is

[1] Clarendon, *Hist. Reb.*, i. 141 (marginal pagination; Ed. 1849).

now five,—the Home, the Foreign, and the Colonial Secretaries, and the Secretaries for War and for India. It should be borne in mind, however, that this division of duties is a mere matter of administrative convenience; that the peculiar dignity and importance of the office of "Secretary of State" is historically anterior to, and constitutionally independent of, the particular functions assigned to him in the Executive. It is important, therefore, from the point of view of strict political accuracy to distinguish between a Secretary of State considered as a departmental officer and the same minister considered as a constitutional intermediary between the Crown and the nation. It is only when the title is employed in the former sense that it would be correct to say that there are five Principal Secretaries of State—the Home, the Foreign, and the Colonial Secretaries, and the Secretaries for War and for India. Constitutionally speaking, there is but one Secretary of State; for the five ministers who divide among them the departmental functions above enumerated are all of co-equal and co-ordinate dignity,—all fully authorised to transact, if need be, each other's business—all equally competent to discharge these specific duties to the Sovereign which belonged to *the* Secretary of State, when as yet there was only one. Thus they are the only authorised channels whereby the royal pleasure is signified to any part of the body politic, whether at home or abroad, and any one of them may be empowered to carry the Sovereign's commands at any time to any person. The counter-signature of a Secretary of State is necessary, as has been remarked, to the validity of the sign-manual, and this counter-signature may be attached by any one of these five ministers. The

Secretaries of State were formerly resident in the royal household, and it is still the practice for one of them to attend the Queen during her occasional visits to various parts of her kingdom. It is, moreover, a rule that one of them must always be present in the metropolis. They have all necessarily seats in the Cabinet; and necessarily, therefore, they are members of the Privy Council, and sit in one or other of the Houses of Parliament. The Secretaries for Foreign Affairs, the Colonies, and India, are appointed indifferently from either House. The Secretary for War, however, has now for some years past been selected from the House of Commons, and an unbroken usage of nearly half a century has confined the Home Secretaryship to the popular Chamber.

The duties of this office are extremely comprehensive and important; and the minister who fills it may be said to unite in his own person the various functions of

(1.) Chief of the constabulary.

(2.) Superintendent in a certain sense of the local magistracy.

(3.) Overseer of prisons, prison-discipline, and generally of all matters relating to the post-judicial administration of the criminal law.

(4.) Adviser of the Crown in the exercise of the royal prerogative of pardon; and

(5.) Supervisor of the administration of the various statutes relating to the regulation of certain kinds of labour, or to the protection of the lives of those engaged therein; together with various other miscellaneous functions which it is simpler to notice in detail than to attempt to classify.

The powers of the Home Secretary in his first

capacity as chief of the constabulary are derived from the special responsibility attaching to him in respect of the preservation of the public peace, and the security of life and property throughout the kingdom. For this purpose he exercises, as the representative of the Sovereign, extensive powers over the civil and military authorities of the country. It has been judicially declared, in a case decided in the Court of Queen's Bench, that the Home Secretary is "himself a magistrate, and has a power of commitment to prison by warrant for just cause;" and though the former of these propositions is incorrect, and the latter too broadly stated, there is an overwhelming weight of judicial authority for the proposition that a Secretary of State is empowered in certain circumstances to commit to prison upon his own warrant.[1] His original authority over the movements of the regular army, the militia, and yeomanry, was superseded by the appointment of a Secretary of State for War; but in the suppression of riot and disorder it would still be the duty of the Home Secretary to communicate with the officers in charge of districts, and to direct them how

[1] Lord Campbell's above-quoted dictum in the case in question is directly opposed to the whole reasonings and conclusions of Lord Camden in the important constitutional case on which his successor principally relied. Lord Camden distinctly lays down in *Entick* v. *Carrington* that the Secretary of State is *not* a magistrate *ex officio*, and that his power of commitment is inherent solely in his functions as a *Privy Councillor*. Nor is it the fact that even as a Privy Councillor he can commit to prison generally "for just cause." He can do so on suspicion of high treason or treasonable practices. In this respect Lord Camden distinguishes his powers as an individual member of the Council from those vested in the Council collectively, whom, he held, it should seem, to possess in this capacity a general authority to issue warrants of commitment.

to act for the support of the magistracy in any such emergency.

These police powers of the Home Secretary are to a large extent prescriptive,—that is to say, derived from usage; but he also exercises a large controlling authority conferred by statute over the police in and around London, the county constabulary, and the police of municipal boroughs. It is also his duty, under the various Extradition Acts, to issue warrants for the surrender (after compliance with certain prescribed forms of magisterial investigation) of fugitive criminals, the subjects of the several States between which and our own country Extradition Treaties have been concluded. He has similar powers with regard to colonial offenders, and may authorise the execution of warrants under which they may be apprehended and returned to the colonies for trial.

The functions of the Home Secretary in relation to the local magistracy are of a somewhat peculiar kind.[1] His power of interference is in theory of almost indefinite extent; but in practice, or at least according to the conception formed of these duties by most Home Secretaries, they are limited by regard for the important principle of

[1] Since this paragraph was written a debate in the House of Commons (August 18) has revealed the prevalence of an error on this subject, which, in its turn, seems to show a necessity for guarding this account of the Home Secretary's duties from misconstruction. Nothing herein written must be understood to imply that he has any power of *reviewing* magisterial sentences in a judicial capacity. It is simply in his capacity of adviser of the Crown in the exercise of its prerogative of mercy that he acts in these cases, and the frequency with which he is solicited to interfere, and does, in fact, institute inquiry, warrants us in treating separately this particular branch of his general duty under head (4).

allowing all reasonable freedom of judicial discretion to tribunals adjudicating in good faith and within the limits of their jurisdiction. The Home Secretary can and does interfere to advise the reversal or modification of the decisions of magistrates in cases where such a step is necessary to prevent manifest miscarriage of justice; but the most trusted and judicious of the holders of this office have, as a rule, deemed it wise to follow in this respect the example set by the superior courts, and have declined to interfere with magisterial decisions which are not palpably perverse or precipitate, even though they may not happen to accord with the ministerial view of the merits of the case.

As adviser of the Crown in the general exercise of its prerogative of pardon, the Home Secretary has an extremely difficult, anxious, and often painful duty to perform. It is true that he seldom, if ever, attempts to discharge it unassisted, and that in deciding on the claims of a convicted prisoner upon the royal clemency, he invariably seeks, and is generally guided by, the advice of the judge before whom such prisoner was tried. But the aid thus obtained is simply a matter of private satisfaction to his own conscience; it relieves him of a portion of his moral, but of no other, responsibility. He, and he alone, is still held constitutionally responsible for the mode in which the prerogative of pardon is exercised; and it is not customary even for the Prime Minister, or any of his colleagues (though he might of course consult them), to assume any direct or recognised share in the obligations which this duty imposes on the Home Secretary. In the event of Parliament finding it necessary to express disapproval of the grant, or denial of a

pardon in any particular case, their censure would as a rule be deemed to fall upon the head of the Home Secretary alone, and to involve no other consequence than that of his personal retirement from office.

The difficulty of this duty is considerably increased by the fact that, owing to a special peculiarity of our criminal law, the chief of the Home Department is sometimes compelled to go beyond his ordinary task of considering merely what extenuating circumstances may be pleaded on behalf of a convicted prisoner, and to re-try the whole case. In other words, he has sometimes to do more than weigh the guilt of an admittedly guilty man, and consider what mitigation, if any, of his full legal punishment may be accorded to him: he has, on some occasions, to consider whether a convicted prisoner is guilty at all, and whether he does not deserve, not as a matter of indulgence, but merely as a matter of right, to be absolved from any punishment whatever. Such occasions arise whenever fresh evidence tending to proof of a prisoner's innocence is brought to light after his conviction; for, since our law does not provide for any criminal appeal upon *the facts* of a case, the only method in which injustice can be prevented or remedied is by allowing such fresh evidence to form the ground for advising the Sovereign to exercise the prerogative in favour of the prisoner,—a proceeding which in itself, of course, involves the injustice, not to say the absurdity, of "pardoning" a man for an offence on the tacitly acknowledged ground that there is no offence to pardon. But it belongs to the Home Secretary to decide whether the evidence in question is really conclusive of the convict's innocence or not; which means, in other words, that

he is compelled to undertake the functions of a jury in his own person—no doubt with the informal assistance of the judge who tried the case, but with none other of the guides to truth, or securities against error, which the proceedings of a regular court of justice are supposed to supply.

Of late years, moreover, a practice of virtually rehearing cases rather upon fresh *statements of opinion* than of *new discoveries of fact*, has grown up at the Home Office. On more than one occasion a plea of insanity, which had been duly raised and considered at a prisoner's trial, has been subjected to a further process of investigation by medical experts acting under the direction of the Home Secretary; and upon their report the finding of the jury on the question of insanity has been practically reversed, and the prisoner's sentence commuted from one of death to one of "imprisonment during the royal pleasure." It should, however, be added that this practice has been subjected to a good deal of public criticism, and that it is obviously one which is opposed to the general principle under which the criminal law is in this country administered.

Among the miscellaneous duties of the Home Secretary, which it is easier to enumerate than to classify, are those imposed upon him by the Acts for the regulation of factory labour, for the inspection of coal mines, for the regulation of labour in other mines and collieries, for the regulation of schools of anatomy, and by a recent statute for licensing, on certain conditions, the practice of vivisection. He is also invested by statute with various powers for the protection of pauper lunatics and the improvement of lunatic asylums.

He further exercises power under the provisions of several Acts in respect of many other matters of social interest or of civil obligation. Down to a recent period it was among his duties to approve the regulations framed by the Registrar-General for the guidance of his subordinates with respect to the registration of births, deaths, and marriages; but these functions have been within the last few years transferred, in company with many others, to another department, to be noticed hereafter. But the Home Secretary still controls the regulations for the registration of aliens; and he is empowered to grant, without fee, certificates of naturalisation conferring civil rights as English subjects upon foreigners of good repute, who are able to produce proofs of continued residence, and of intention to continue to reside, in the United Kingdom.

Here, too, perhaps, will be the most convenient occasion for a brief review of the administration of Scotland and Ireland—the affairs of the latter portion of the United Kingdom being still nominally, and those of the former actually as well as nominally, under the special care of the Home Secretary.

The union of England and Scotland in 1707 into the kingdom of Great Britain was, unlike that of Ireland a century later, an executive as well as a legislative union. Coincidently with the dissolution of the Scotch Legislature, the whole business of government was transferred to London, and intrusted to a third Secretary of State specially appointed to take charge of Scottish affairs. This arrangement subsisted until 1746, when the office of this functionary was abolished, and his duties divided between the two remaining Secretaries of State. In

1782, on the organisation of the Home Department of the Secretariat of State, the Scotch business, as being of a domestic character, fell naturally to the new department, which has been responsible for it ever since. In the actual conduct of it, however, the Home Secretary is to a great extent guided by the advice of a Scotch official —the Lord Advocate—who may, indeed, be regarded as an Under Secretary (though with considerably more than an Under Secretary's influence) for that part of the United Kingdom. Besides being the Attorney-General and public prosecutor for Scotland, he is the legal adviser of the Crown in Scottish affairs, and having, when appointed, or afterwards obtaining, a seat in the House of Commons, he acts in that House both as the spokesman and representative of ministers with regard to matters of Scotch administration, and on occasion as intermediary between the Government and the Scottish members, for the purpose of ascertaining the views of the latter on questions specially affecting the interests of Scotland. The due consideration of these interests has, in some administrations, been further secured by the selection of one of the Lords of the Treasury from among the members of Parliament representing Scotch constituencies. To this official is intrusted the general supervision of Treasury business affecting Scotland, and he also assists the Lord Advocate in the management of Scotch business in Parliament, with the exception of legal business, for which the law officer is wholly responsible.

The Irish Executive is still kept distinct, at least outwardly, from that of the rest of the United Kingdom. The government of Ireland is formally vested in a Viceroy, usually styled the Lord Lieutenant, in abbreviation of

his full official title of "Lord Lieutenant-General and General Governor of Ireland." He is assisted by a Privy Council, consisting of fifty or sixty members, whose sanction, like that of the English Privy Council, is necessary to give validity to many of the official acts of the Executive. The Lord Lieutenant of Ireland possesses nominally very extensive powers, but his actual freedom in their exercise is by no means commensurate with their ostensible extent. He acts under instruction from the Crown, conveyed to him by the ministry for the time being, whose business, it has been laid down, "is to direct him in his proceedings, and to animadvert upon his conduct if they see him act improperly, or in a manner detrimental or inconvenient to the public service, or displeasing to the Crown." The Cabinet Minister, ordinarily responsible for advising and directing the conduct of the Lord Lieutenant, was at one time the Secretary of State for the Home Department; and it is presumed that theoretically the responsibility still attaches to him.[1] But in practice it has now devolved wholly, and, considering his subordinate title, somewhat anomalously, on a functionary whose strict official style is that of "Chief Secretary to the Lord Lieutenant." The Secretary for Ireland, as he is popularly called, has, since the abolition of the Irish Parliament, become essentially the Prime Minister of the Viceroy. He wields great powers, which he

[1] In the House of Commons, on a recent occasion, the Home Secretary was, in the absence of the Irish Secretary, appealed to for information on the state of Ireland, on the ground of his general responsibility for peace and order throughout the United Kingdom. Sir William Harcourt admitted the constitutional warrant for the appeal, but pleaded that "the details of Irish affairs did not pass through the Home Office."

is sometimes called upon to exercise without communication with his chief, and he is the minister responsible to Parliament for every act of the Irish administration. He is invariably a Privy Councillor, and has always, at least of late years, been a member of the lower branch of the Legislature; and the increasing frequency with which this post has in modern practice been associated with a seat in the Cabinet is a testimony to its augmented importance, and a proof of its virtual independence of the control of the Home Secretary. We can at any rate scarcely suppose that any one would nowadays share Sir Robert Peel's "grave objections" to making the Irish Secretary a Cabinet Minister, on the ground that it tended not only to "disturb, but to invert the relation of a subordinate to his chief" (the Lord Lieutenant never being included in the Cabinet), and that it "encouraged the Secretary still more to assume for himself the exercise of independent powers." On the whole, it seems safe to say that the subordination of the Secretary for Ireland to the Secretary of State for the Home Department has now ceased to represent anything more than a formal recognition of the constitutional principle, that a Secretary of State is the proper medium for the transmission of the commands of the Sovereign to the Lord Lieutenant of Ireland as to any other servant of the Crown; and that the responsibility of the Home Secretary for "the peace of the realm" in general would not nowadays be deemed to warrant his overruling any decision of the Chief Secretary to the Lord Lieutenant with respect to administrative policy in Ireland. Such an exercise of authority is now virtually confined to the Prime Minister and to the Cabinet at large.

It has been already remarked that while the Secretaries of State for Foreign Affairs, the Colonies, and India, are appointed indifferently from either of the branches of the Legislature, an unbroken usage of nearly half a century has confined the Home Secretaryship to the House of Commons; and it should here be added that the House from which a Secretary of State must be chosen will not be in some cases a matter of choice, since the number of these functionaries capable of holding a seat in the Lower House is limited by statute. By the Act of Anne, above referred to, the two principal Secretaries of State then in existence (and two Under Secretaries) were at liberty to sit in the House of Commons; and when the number of secretaries was increased to three, no third seat in the Lower House was assigned to them. But in 1854, upon the creation of the fourth Secretaryship of State, for the purpose of separating the administration of War and Colonies, an Act was passed enabling a third Secretary of State and a third Under Secretary to sit in the House of Commons; and similarly when, in 1858, a fifth Secretary of State was appointed to take charge of the affairs of India, the Act transferring the power of the East India Company to the Executive contained a clause authorising any four of the Principal Secretaries of State and any four Under Secretaries to hold seats in that House.

The invariable presence of the Home Secretary in the popular assembly secures, therefore, a direct expression of the principle of parliamentary responsibility as regards the affairs of this department in the person of its head. He possesses, however, a parliamentary as well as a political Under Secretary, the former of whom usually

finds plenty of occupation in assisting his chief to discharge the onerous parliamentary duties of an official whose acts are more jealously watched, and more frequently and keenly criticised, by members of the Legislature than those of perhaps any of his colleagues.

CHAPTER V.

THE FOREIGN OFFICE.

It has been mentioned in the last chapter that among the committees for special business which appear from the records of the State Paper Office to have been appointed from the general body of Privy Councillors, was one entitled the "Lords Committees for Foreign Affairs." Such a committee was, as has been seen, in existence in 1630, and is also the subject of another reference in these records ten years afterwards. But there is nothing to show whether it was a temporary or a permanent body, or even merely to establish its continuous identity throughout the period in question. Nor, of course, is it to be supposed that, even if it maintained an unbroken exercise of its functions during these years, it was either then or for long afterwards anything but a very inadequate representation of the department to which this branch of the duties of the Executive is now entrusted. The resemblance, indeed, between any of these committees, whether for war, or foreign affairs, or what not, and the modern State departments of which they were undoubtedly the germ, is in every case slight enough. For none of them were ever much more than little detachments of Councillors, told off to consider and report to

their Sovereign upon various matters of State, and to give advice thereon which might be accepted or rejected by him at pleasure; and the points of distinction between such "advisers of the Crown" and those to whom this title is applied under our modern constitutional system, are necessarily far more important than their superficial similarities. But there are special reasons for supposing that the effective authority of the Committees for Foreign Affairs would in most reigns have been even less than that of other committees.

The direction and control of the foreign policy of a nation is not only one of the most important of royal prerogatives, but it is the one about which monarchs have generally most concerned themselves. It is the branch of kingcraft in which many kings have taken their chief interest, and which they have the most jealously retained under their own control. It is, moreover, the one with which, in the earlier stages of their political development, people would be least competent and possibly least desirous to interfere. This, at any-rate, was certainly the case with our own people, whose representatives in Parliament, even at a period when the Commons had already begun to display an energetic though fitful activity in the assertion of other constitutional privileges, declined to intermeddle in foreign affairs. In the 21st year of Edward III., for example, the House of Commons in express terms excused itself from the duty of advising the King, even at his own solicitation, in the question of the French war. They were, they said, "so ignorant and simple that they knew not how, nor had the power to devise" as to the war and "the equipment necessary for it;" and though the

circumstances render it probable that the assumption of this extreme humility was not entirely sincere, the incident is none the less valuable as evidence that the Commons of that day felt no temptation to accept this addition to their advisory powers. Even after the Revolution had laid the basis of our modern constitutional system, the Sovereign, as has already been noticed, continued still for a time to exercise a complete control over the foreign policy of the country. Nor is there any reason to suppose that this departure from strict constitutional principle was resented by the nation. On the contrary, there is, as Macaulay points out, every reason to suppose that the nation actively approved of it. "It would be a great error," he says, "to imagine even now that our princes merely reign and never govern;" but "in the seventeenth century both Whigs and Tories thought it not only the right but the duty of the first magistrate to govern. All parties agreed in blaming Charles II. for not being his own Prime Minister; all parties agreed in praising James for being his own Lord High Admiral; and all parties thought it natural and reasonable that William should be his own Foreign Secretary." The divergence, however, between actual practice and constitutional theory was in the later years of William III. brought by one famous passage of international politics into striking prominence. For the prerogative, which the English Parliament left willingly in the hands of the ablest European statesman of that day, was on one important occasion only capable of being exercised by resort to a procedure which presupposed the principle of ministerial responsibility. The monarch who, in his sole person, and without the advice or even

the knowledge of a single minister, conducted the negotiations for the momentous Partition Treaty to a conclusion, was compelled, in order to execute that instrument in proper form, to obtain the co-operation of a Secretary of State and the imprint of the Great Seal; and this validation of the King's act formed the substance of one of the articles of impeachment exhibited against Lord Somers by the House of Commons. The Chancellor escaped; but the incident had a result which may be looked upon as marking the commencement of the change whereby this branch of the royal prerogative has been brought as completely as the other within the operation of constitutional principles. To mark their disapproval of the mode in which this treaty had been concluded the House of Commons introduced into the Act of Settlement a clause providing for the discussion of all State affairs in full Privy Council, and for the signature "by such of the Privy Council as shall advise or consent to the same" of all resolutions taken thereupon. This provision was, however, seen to be too stringent, and was repealed before the accession of the House of Hanover brought the Act of Settlement into force; but the spirit which animated it continued to grow. On two occasions in the reign of George II., Lord Hardwicke, the then Lord Chancellor, refused to put the Great Seal to conventions concluded by the King himself—the instruments in question being deemed by him to embody provisions injurious to the interests of the country; and long before the end of the century there would have been few constitutional lawyers found to deny that the conduct of foreign policy had taken its place among the prerogatives which the Sovereign is

constitutionally bound to exercise according to the advice of his ministers.

The effect of this further realisation of the principle adopted in theory at the Revolution was naturally to raise the functionaries by whom the Sovereign had been hitherto assisted in the management of foreign affairs to the position of responsible ministers. The two officials between whom the Secretariat of State had been divided, from the middle of the sixteenth century onward, became joint depositaries of the powers now exercised in severalty by the Home and Foreign Secretaries. They may be regarded, indeed, as having succeeded to the functions marked out in the scheme of Clarendon for his first Committee of the Privy Council, namely, the "Committee for Foreign Affairs," which was to "have also the correspondence with Justices of the Peace and other officers, etc., in the several counties." But though their powers as joint Foreign Secretaries were no doubt co-equal and co-ordinate, the duties involved in the management of the foreign affairs of the country were, for convenience, distributed between them on geographical principles. Down till near the end of the eighteenth century the Secretariat of State was divided into two departments, styled respectively the Northern and the Southern Departments. To the former was assigned the conduct of our intercourse with Denmark, Flanders, Germany, and the German Princes and States, Holland, Poland, and Saxony, Prussia, Russia, Sweden, and the Baltic. To the latter department belonged France, Portugal, Switzerland, Spain, Italy, the so-called "Barbary States," and Turkey. This arrangement remained in force until the year 1782, when, among other important redistributions

of departmental work, the internal and external affairs of the country were definitively separated, and placed respectively under two distinct Secretaries of State—the Secretary of State for the Home Department, and the Secretary of State for Foreign Affairs.

The present duties of this last-mentioned minister are of a more uniform and homogeneous character than those of his colleague of the Home Department, but they are nevertheless of a highly important character, and even in ordinary times demand no common share of foresight, energy, vigilance, and discretion. The Foreign Secretary is the official organ and adviser of the Crown in its intercourse with foreign powers, and upon him devolves the duty of conducting those international negotiations upon the success of which the most vital interests of his country, or of Europe at large, may on occasion depend. In affairs of this high moment the general line of policy to be pursued would, of course, be settled by the Cabinet collectively; but the execution of the particular plans agreed upon must be largely left in his hands, and, according to the amount of tact and address displayed by him in directing it, the ministerial policy may to a great extent be made or marred.

Among the ordinary duties of the Foreign Secretary is that of protecting British subjects abroad, of entertaining their complaints and applications for redress, and obtaining satisfaction from foreign powers for injuries which they may have sustained at the hands of the subjects of such powers.

He has also to introduce to his Sovereign the accredited representatives of other Governments, to inquire into and redress their complaints, and to maintain their

privileges inviolate. He has, moreover, to keep foreign States informed of all the important acts of Her Majesty's Government which may concern them, and generally to cultivate amicable relations between such States and his own country, as far as possible; for which latter purpose he communicates regularly with our ambassadors or other diplomatic agents at the various foreign Courts. Another part of his ordinary duties is to grant passports to British subjects intending to visit those countries, now few in number, in which this restriction upon free access still survives. He has the general selection of all ambassadors, ministers, and consuls accredited from Great Britain to foreign Powers, though the appointment to a particular mission, at any exceptional crisis, and for the execution of a specific policy, would very often doubtless be made a Cabinet question, and settled by the ministry at large.

Less of the work of the Foreign Office than of any other great department of the State is performed by subordinate officials. It is not considered safe to allow any decision to be taken in the Foreign Office (except possibly upon matters of mere routine) without the knowledge and assent of the Secretary of State. Further, no important political instruction is sent to any British minister abroad, and no note addressed to any foreign diplomatic agent, without the draft of such instruction or note being first submitted to the Prime Minister that he may take the pleasure of the Sovereign thereon; and the neglect of this constitutional formality led in one well-known instance to the dismissal of the offending minister.[1]

[1] Lord Palmerston in 1852.

This rule, however, concerns only the relations between the Foreign Secretary and the Crown. His responsibility to Parliament, and the control of that assembly over the exercise of his functions, is provided for, so far as may be, by the practice of periodically laying before Parliament (either with or without a request in either House for its production) the correspondence which passes between the Foreign Secretary and the ministers of foreign powers or our own representatives abroad. Upon the production of this correspondence it is open to any member of Parliament who may be opposed to the policy which it discloses to invite the House to record a censure thereof; and in the event of such an invitation being accepted, it would be the duty of the minister thus censured, or of the entire Cabinet, if the matter be one of such importance as to have been made a Cabinet question, to resign office.

The means of control with which Parliament is thus provided is as a rule sufficient for its purpose; but there are certain causes inherent in the nature of the case which necessarily render parliamentary control less complete and effective in its application to the conduct of foreign policy than to any other of the ministerial functions.

In the first place, parliamentary inquiry may be, and frequently is, resisted by a ministry during the *pendency* of negotiations, on the plea that the disclosure of the details at such a stage would be incompatible with the interests of the public service. This plea is in many cases well founded, and in no case is it one which a deliberative assembly, in the absence of the information which it is their very object to elicit, can be in a position to contro-

vert. As a rule, therefore, the plea avails; but it necessarily follows therefrom that Parliament is deprived of all power of interposing (as it can do in other departments of policy) to *prevent* the adoption of a line of action which a majority of its members may possibly regard as injurious to the national welfare. All it can do is to review the conduct of ministers *after the fact*, and either to approve wise measures which it had no share in directing, or to condemn errors which are beyond its power to repair.

And, in the second place, there is a part, and a considerable part, of the negotiations carried on between English ministers and the Governments of foreign powers, which not only must not be prematurely communicated to Parliament, but in many cases cannot even be communicated at all,—negotiations which, as between the Governments engaging in them, are of a strictly confidential character, and are so understood to be by all the parties thereto. It might, no doubt, be urged that the obligation to secrecy is one which an English Government has, as against an English Parliament, no power to contract; and upon a strict application of the principle of ministerial responsibility, this is no doubt true. But the question, if it is to be reasonably considered, must be treated as one not so much of constitutional principle as of practical expediency. Parliament might be within its right in compelling an English Government to divulge matters of confidential communication with other Powers, and such other Powers might have no reason to complain of the non-fulfilment of undertakings which those who entered into them had no authority to contract. But, whether they could reasonably complain of this dis-

appointment or not, they would assuredly resolve not to subject themselves to it a second time; and in mere self-defence they would, for the future, decline to communicate anything to an English minister which they were not prepared to see published to all the world. How serious a disadvantage our Government would be subjected to in their intercourse with foreign Powers, if such a course were to be adopted by the latter, it is unnecessary to point out.

On the whole, therefore, the point appears to be one on which the strict principles of ministerial responsibility has been wisely relaxed. As regards much of his policy, a Foreign Secretary, or the ministry to which he belongs, may be, and is, fully held to account; and if, as to certain other portions of it, he is left irresponsible and uncontrolled, it is only to avoid the error of sacrificing ends to means. The principle of ministerial responsibility only exists for the purpose of ensuring that the nation be governed conformably to the national interests; and since, upon any reasonable view of those interests, its Government must be put in a position to compete in diplomacy upon equal terms with those of other States, the nation does well to refrain from any such exercise of its constitutional privileges as would deprive it of that advantage.

The post of Foreign Secretary has been held under successive administrations for some years past by a member of the House of Lords. The arrangement is, for many reasons, and particularly as regards the ceremonial duties of the office in connection with foreign embassies, a convenient one; but there is, of course, no reason why it should not be again associated, as it has often formerly been, with a seat in the Lower House; and it is owing only

to accidents of personal fitness that nearly all the commoners who have held the office since Mr. Canning's time have, in virtue of courtesy titles, belonged nominally to the peerage. In the cases in which the Foreign Secretary sits in the House of Lords, his responsibility to Parliament is secured by the presence of a parliamentary Under Secretary in the House of Commons,—an official whose departmental duties are perhaps of less importance than those of the permanent Under Secretary; in whose hands, in order to obviate the inconveniences which would otherwise too frequently result from a sudden change of ministry, the whole of the most important work of the department is generally allowed to remain.

CHAPTER VI.

THE COLONIAL OFFICE.

THE Colonial Office is usually described as the third, but, as will be seen, might be more accurately reckoned as the fourth, of the great State Departments to be placed under the separate charge of one of the Principal Secretaries of State. Its history has been a somewhat singular one, since it has been successively associated at various times with no fewer than three other departments now distinct from it—the Board of Trade, the Home Office, and the War Office. With the first-mentioned of these departments, indeed, the history of the early stages of its development is intimately interwoven, and down to nearly the end of the eighteenth century the gradual rise and progress of the two establishments must be traced together.

In November 1660 Charles II. created a Council of Trade, and, a month later, a Council of Foreign Plantations.

These two Councils, however, were soon destined to be for a brief period more closely united. By a patent of 1672 Charles II. revoked all former commissions, and constituted a single standing "Council for Trade and Plantations," with Shaftesbury at its head, which remained in function till 1675, when this commission also was revoked,

and in 1695 the "Council," or "Board of Trade and Plantations," as it then began to be called, was revived by William III.

Thus matters remained until 1768, when the increase of business connected mainly with our Transatlantic possessions led to the appointment of a Secretary of State for the Colonial or "American Department," as it was then called, in addition to the two Principal Secretaries of State then existing. The Board of Trade and Plantations, however, was not immediately abolished, but continued for some years to exist side by side with the newly-created Secretaryship of State for the Colonies. Indeed, it maintained at least a nominal existence as long as the new creation itself, and only disappeared along with it in the great reorganisation of the executive departments in 1782.[1] In that year both the Colonial Secretaryship and the Board of Trade and Plantations were abolished by the 22 Geo. III. c. 82, and the powers of the latter body transferred "to such Committee or Committees as His Majesty should appoint." These "powers," however, must be understood to mean only the powers of the Board in connection with trade; for the whole of the colonial business was next year transferred, together with the management of Irish affairs, to the Home Office. Here it was at first conducted in a subordinate department, called the "Plantation Office," under the direction of an Under Secretary and clerks;

[1] The Board fell under the stinging sarcasms of Burke, who described it in that great speech on "Economical Reform" which practically brought about the reorganisation, as "a sort of gently-ripening hothouse, where eight members of Parliament receive salaries of £1000 a year in order to mature at a proper season a claim for £2000."

and on the abolition of this branch office a few years later, colonial affairs became part of the regular business of the Home Department. Under this administration they remained until after the beginning of the next century, when (in 1801) they were yet again transferred to a new Secretary of State—the Secretary for War, who had been appointed shortly after the outbreak of the revolutionary war in 1794, and whose department accordingly received the title of the Department for "War and Colonies."

And lastly, in 1854, the two functions of colonial and military administration were finally separated by the appointment of a fourth Secretary of State. The Duke of Newcastle, at that time Secretary for War and Colonies, assumed—by virtue of a declaration in Council—the office of "Secretary of State for War" alone, and a new appointment was made to the post of Secretary for the Colonies. This change having been effected to meet the special exigencies of a state of hostilities, is on that account usually described as the "creation of the Secretaryship for War;" but it would be obviously more accurate to say that the "new" Secretaryship of State then created was that conferred upon the new head of the Colonial Department, then first raised to a position of independence, and freed from its connection with an already existing branch of the Secretariat.

The duties devolving upon this department in relation to the affairs of a colonial empire so extensive and so various in character as our own, must necessarily be very considerable; but these duties are, as will be seen, by no means directly proportioned in each case to the physical magnitude, or even the political importance, of

the respective possessions to which they relate. On the contrary, the labours and, except in the case of colonial wars and other similar troubles, the responsibilities of this minister are often far less onerous in the case of our largest and most important colonies than in that of any others; and this for a reason which will at once appear from a comparison of the different relations which subsist between the Executive Government and the various foreign possessions of the Crown.

These relations are of three kinds, and all British colonies and dependencies may, according as they fall under one or other of these categories, be divided into three classes. They are either—

(I.) Crown Colonies, *i.e.* colonies in which the Crown has the entire control of legislation, while the work of administration is carried on by public officers under the control of the Home Government; or

(II.) Colonies possessing representative institutions but *not* responsible Government, in which the Crown does not legislate, but exercises a veto on legislation, and the Home Government retains the appointment and control of public officers; or

(III.) Colonies possessing representative institutions *and* responsible government, in which the Crown has only a veto on legislation, and no control over any public officer except the Governor.

Now it is evident, of course, that the responsibility of the Colonial Office reaches its maximum in relation to the Government of colonies of the first of these classes, and that it descends, through the second, to its minimum in the third. In certain colonies, or rather dependencies, of the first class, such as Gibraltar, St. Helena, and

Heligoland, the work of legislation is carried on by the Governor alone; in other Crown colonies, of which Malta, Jamaica, Ceylon, the Gold Coast, etc., may be taken as examples, the Governor legislates with the concurrence of a Council nominated by the Crown; but in each and all of these cases the initiative in legislation proceeds actually or virtually from the Crown itself, and the administrative officers are the immediate servants of the Home Government.

In the colonies enjoying representative institutions, whether with or without responsible government, the legislative machinery varies considerably in form. Some of Class II., as, for instance, certain of the West India Islands, possess a double chamber, viz. a Council nominated by the Crown and an Elective Assembly; others, as Natal, for example, legislate through a single chamber, partly nominated by the Crown and partly elective. In some, again, of Class III.—the colonies combining representative institutions with responsible government—the upper chamber is nominated by the Crown, while the lower is elective. Such is the case in the Dominion of Canada, in the Cape Colony, in Newfoundland, in New South Wales, and in Queensland. And lastly, others of this class, such as Victoria and South Australia, receive their legislation from two chambers, both constituted on the elective principle.

But though in each of these classes the legislative acts of the Colonial Assemblies have to receive the sanction of the imperial authority, the possession by the latter class of "responsible government," as well as representative institutions, makes a considerable difference in their relations to the minister at home. In colonies

thus governed the members of the Executive Council,—the Government of the colony, in fact,—are appointed by the Governor alone, with reference to the exigencies of a representative system, or, in other words, in accordance with the views of the local Legislature; while all other public officers are appointed by the Governor on the advice of the Executive Council, the sanction of the Home Government not being required for any of these appointments; and thus the control of all public departments is practically placed in the hands of persons commanding the confidence of the majority of the representative assembly.

But while the duties of the Colonial Office are thus lightened as regards this latter class of cases, it has still a mass of very important functions to perform in respect both to the administrative and to the legislative departments of colonial affairs. In the former department the Secretary for the Colonies is often busily occupied in corresponding with Colonial Governors upon questions relating to the policy to be pursued by them in those situations of difficulty which are of such frequent recurrence in an empire including so many different, and, in many instances, mutually hostile races as our own; and it not unfrequently becomes his duty to keep himself informed almost from day to day (where the telegraph provides means of daily communication) of every successive step on the policy of a Colonial Governor, and to acquaint him in turn with the views and opinions of Her Majesty's Government thereon.

In the department of legislation (in which is to be included the financial measures adopted by colonies not possessing responsible government) the mere routine

duties of the Colonial Department are very extensive, to say nothing of the serious and difficult questions which, in the course of these duties, may at any moment arise. It has been said that the Crown possesses a veto upon all legislative measures of even the most independent of the colonies, and from this it follows that the whole mass of colonial legislation must pass regularly under the review of the Colonial Office. In every colony the Governor has authority either to give or to withhold his assent to laws passed by other branches or members of the Legislature, and until that assent is given no such law is valid or binding. Laws are in some cases passed with "suspending clauses;" that is, although assented to by the Governor, they do not come into operation or take effect in the colony until they shall have been specially confirmed by Her Majesty; and in other cases Parliament has, for the same purpose, empowered the Governor to reserve laws for the Crown's assent instead of himself assenting or refusing his assent to them. Every law which has received the Governor's assent (unless it contains a suspending clause) comes into operation immediately or at the time specified in the law itself. But the Crown retains its power to disallow the law; and if such power be exercised at any time afterwards, the law ceases to have operation from the date at which such disallowance is published in the colony. The discretion of the Colonial Secretary as to disallowing or assenting a law is manifestly one demanding much care and judgment in its exercise; and, in view of this, it is the practice of the department to require every legislative Act of a colony to be accompanied by a statement from the law-officer of the Crown in such colony, to the effect that in

his opinion the royal assent may properly be given or ought not to be given thereto, and also by a report from the Governor, or from the law-officer, giving all requisite explanations respecting the object of the Act, the motive in which it originated, and any legal or political question which it may involve. With this assistance the Colonial Secretary proceeds to consider the law, and if the objections to it appear grave enough to justify its disallowance, he would probably submit the question to the Cabinet. The decision ultimately arrived at, whether favourable or adverse, is then signified, in the case of a colony possessing representative institutions, by order in Council; in the case of a Crown colony, generally by a simple despatch.

In some cases a period is limited, after the expiration of which local enactments, though not actually disallowed, cease to have the authority of law in the colony, unless before the lapse of that time Her Majesty's confirmation of them shall have been signified there; but, according to the general rule, the disallowance of laws is effected by a substantive act of the royal authority, and they remain in force until that authority is thus exerted.

In colonies possessing representative assemblies laws purport to be made by the Queen, or by the Governor on Her Majesty's behalf (or sometimes by the Governor alone, omitting any express reference to Her Majesty), with the advice and consent of the Council and Assembly. They are almost invariably designated as Acts. In colonies not having such assemblies laws are designated as "Ordinances," and purport to be made by the Governor, with the advice and consent of the Legislative Council.

It has been above observed that under the head of legislation requiring the royal sanction to its validity is to be included the financial measures of colonies not possessing representative assemblies. In such colonies the rule is for the Governor to submit to the Council of his Government, before the expiration of the month of June in each year, such an estimate as he may think necessary of the whole expenditure not already fixed under the sanction of the Imperial Government, which is intended to be charged upon the colonial revenue for the year then next ensuing, and to transmit to the Secretary of State at the earliest opportunity the ordinance providing for the service of that year. Together with these annual estimates the Governor transmits such full and sufficient information as to any expenses of an unusual nature therein comprised as may be necessary to enable Her Majesty's Government to decide upon the propriety of the proposed expenditure. The annual estimate having been passed by the Council of the colony, the draft of an ordinance providing the ways and means for meeting the proposed expenditure is also laid before them, and thereafter transmitted to the Imperial Government for confirmation. Upon this confirmation being received, the expenditure of the year is considered as definitely limited and arranged; but in case any further and unforeseen disbursements should afterwards be required for the service of the year, it is the duty of the Governor to submit a supplementary estimate to the Council for the sum so required; and copies of all estimates, supplementary estimates, and ordinances for the imposition of taxes, and of all despatches relating thereto, accompany the colonial accounts when the latter are transmitted to

this country for the final Imperial audit, which, after passing under the revision of a local auditor, they have to undergo.

To complete the account of the functions mediately or immediately discharged by this department, it is necessary to devote a few words to the subject of emigration. The history of this subject has been as follows:—A Commission was appointed some fifty years ago to inquire into the question of emigration, and in 1840 a "Colonial Land and Emigration Board," consisting of three Commissioners, was appointed. In 1846 the duty of reporting on colonial laws, which had previously been performed at the Colonial Office, was transferred to the Commissioners, and (a vacancy having occurred at the Board) a legal member was appointed for this service. In 1847 the Board was re-organised, and was specially charged—(1) to consider all questions relating to colonial lands which may be referred to them by the Secretary of State, to report on claims to lands, draw up leases for minerals, and draft orders in Council relating to land or emigration; (2) to deal with all matters relating to the conveyance of emigrants to the various colonies of Great Britain, especially Australia; (3) to diffuse information respecting the British colonies in aid of the settlement thereof; (4) to report on all colonial laws and ordinances referred to their consideration, especially such as relate to land or emigration.

The duty of reporting on colonial land questions was formerly very onerous, but after the transfer of the management of the Crown lands in most instances to the Colonial Legislatures, the duties of the Emigration Board became considerably reduced, and a few years ago

the Board was altogether abolished. So much of its functions as still remained to it were transferred to and are now performed by certain officials known as "Crown Agents" for emigration.

The Secretaryship of the Colonies is one of those ministerial posts which are assigned indifferently to members of either branch of the Legislature. Like the Foreign Secretaryship, however, it has, as a matter of fact, been held for several years past under successive administrations by members of the House of Lords. And it may here be added, as it might have been in the course of the remarks made on the subject of the Foreign Secretaryship, that the constitutional necessity of seating the Chancellor of the Exchequer in the House of Commons, the long-accepted rule of appointing the Home Secretary from the same assembly, and the now generally admitted expediency of assigning seats therein to one or both the heads of the two great spending departments—the War Office and Admiralty—must naturally tend, in the process of distributing places of dignity and importance among the various party leaders in either House, to place these two departments—the Colonies and the Ministry of Foreign Affairs—more often perhaps than not in charge of a peer. In such cases the responsibility for the conduct of colonial affairs is secured, as in other instances, by the presence in the House of Commons of a parliamentary Under Secretary for the Colonies, who discharges a function precisely analogous to that exercised by the Under Secretary for Foreign Affairs.

CHAPTER VII.

THE WAR OFFICE.

THE duties devolving upon the working head of the War Office must at all times have been, from the nature of the case, important; but his position was not always one of the same authority and dignity as at present. It is only in comparatively recent times that the direction of this department has been associated with the Secretariat of State, and only in quite recent times that it has been assigned as his *sole* charge to one of the high functionaries who may be said to hold the Secretariat in commission. For a long time, indeed,—for a much longer time, as has been pointed out, than was the case with the other branches of executive government,—it would have been impossible for the Chief of the War Department to have occupied a position of co-ordinate authority with the other ministers of the Crown; for the simple reason that it was long before this officer became in the modern, the full constitutional sense a minister at all. The *command* of the army was the last of the royal prerogatives to be brought under the principle of ministerial responsibility; and until it definitively took its place among those executive functions for the proper discharge of which the advisers of the Sovereign

are held accountable, there was no reason why the Chief of the War Department should be an official of Cabinet rank, or why he should even be (though as a matter of fact he frequently was) a member of one or other branch of the Legislature. So long as the Sovereign continued to be in fact, as well as in name, the Commander-in-Chief of the Army, it was impossible for his War Minister to *be* a minister in the full constitutional sense of the word.[1]

A "Secretary at War," as the official who for nearly two centuries presided over the department was called, is first heard of in the reign of Charles II.; the creation of and first appointment to this office having been made by Royal Warrant of January 1668-9. His position from the outset appears to have been an ambiguous one, and his relations to Parliament, to the Crown, and to other offices and officers connected with the military administration, were ill-defined, and a subject of frequently recurring controversy. He was, as has been said, "neither a military officer, though the Commander-in-Chief claimed his allegiance as such, nor a responsible minister, though the House of Commons strove to fix him with that character.[2] "Under William III. his

[1] It should scarcely be necessary to guard this and the remarks immediately preceding it from misconstruction. They are, of course, not intended to imply that Parliament had, until quite recent times, no general powers of control in military matters. Such powers it has possessed ever since the Revolution Settlement—one of the objects of which was indeed to secure them; and by means of the "power of the purse," and the annual Mutiny Act, the *ultimate* authority of the House of Commons in this matter has always been well-established enough. All that is meant is that the full control over the *details* of military administration and expenditure was not acquired until a much later date.

[2] Clode, *Military Forces of the Crown*, ii. 253.

authority was permitted to equal—or he was at least treated as though it equalled—that of a Secretary of State. He accompanied William abroad to his Continental wars as though in the usual constitutional capacity of a Secretary of State; and, what is more, his countersign was actually accepted as a proper attestation of the royal sign-manual. Such a condition of things was of course eminently unsatisfactory—a king who could "do no wrong" attended and advised by, and acting through, a minister who, in those days, continually asserted that he was *not* a minister responsible to Parliament. There were even occasions when this failure of constitutional responsibility involved serious practical consequences in the way of abridgment of the right of the subject. Thus Lord Bath, for instance, the holder of this office in 1717, justified the issue of orders for the illegal trial and execution of the half-pay officers taken on the field of Preston, upon the express plea that the Secretary at War is "a ministerial and not a constitutional officer,"—that, in fact, he was as much "the mere instrument of the commands of the royal Commander-in-Chief as a private soldier is of the commands of his officer." At the same time, however, while minimising the importance of his post for this purpose, a Secretary at War was very ready to magnify it in departmental affairs; and constant jealousies arose out of the attempts of this official to exercise control over the Transport and Ordnance Offices, and compel the heads of these offices to report directly to him instead of to the Treasury or the House of Commons.

As regards Parliament, however, the position of the Secretary at War became somewhat more satisfactorily

defined towards the close of the eighteenth century. The persistent efforts of the House of Commons to fix him with responsibility were at last successful, and the principle contended for not only received formal statutory sanction in Mr. Burke's Act in 1783, but was fully admitted by the then Secretary at War himself. In 1795, as has been noticed in the preceding chapter, a Secretary of State for War was appointed, and, in conjunction with that office, assumed the administration of colonial affairs. Appointments, however, continued to be made as usual to the post of Secretary of War, and that official remained in reality the working head of the War Department. The so-called department of War and Colonies came by degrees to be known as the Colonial Department alone, and had, in fact, no concern at all with the army so far as the home dispositions of the forces went. The administration of military affairs at home was divided between the Secretary at War, the Commander-in-Chief, and the (now extinct) departments of the Master-General and Board of Ordnance, while the Secretary of State for War and Colonies had, on the other hand, the sole management of all troops directly they left the shores of England.

The inconveniences, however, and the imperfect efficiency of this system, had led, by the middle of the present century, to a general opinion that the duties of War Minister should be separated from those of Colonial Secretary; and accordingly, at the commencement of the Crimean campaign, the office of Secretary of State for War was created by declaration in Council, and the Duke of Newcastle was appointed thereto, the old office of Secretary at War being nevertheless still retained.

But the mismanagement of that campaign, and the parliamentary inquiry to which it gave rise, had the effect, among others, of convincing the Legislature that further consolidation was required; and shortly afterwards, in 1856, our system of military administration substantially assumed its present form. The office of Secretary at War was abolished, and the departments of Ordnance and Commissariat were united with the War Office, to which was also assigned the control of the militia, the yeomanry, and afterwards the volunteers, and the whole was placed under the supreme and undivided authority of the Secretary of State for War. A question much discussed at the time was whether this high office should be confined to members of the House of Commons; and though it was not so limited to fact, and the first War Secretary after the re-organisation was a peer, the post has ever since been held by a member of the popular Chamber.

We have next to consider the nature and extent of the authority vested in the Secretary for War; and herein of his relations to the military head of the royal forces, the Commander-in-Chief.

It will be recognised as a necessary inference from much that has been above stated that the relation of the Secretary for War and the Commander-in-Chief must in general, and as regards all important matters of military administration, be that of superior to subordinate. Were it otherwise, the principle of ministerial responsibility could not be applied. For the Commander-in-Chief is not a member of the Cabinet, nor need he have a seat in either House of Parliament; and unless, therefore, he could be overruled by the Secretary for War, the acts of administration performed by him in the

name of the Sovereign would be acts for which no minister would be responsible, which is contrary to the now settled principle and practice of the Constitution.

It would appear, however, at first sight as though this constitutional principle had been set at nought in the earlier designations to this office. The patent of appointment conferring upon the Secretary of State for War "the administration and government of the army and ordnance, including all matters relating to the pecuniary affairs, establishment, and maintenance of the army," was originally accompanied by a supplementary patent limiting the general powers of the Secretary for War in certain points, namely, "the military command and discipline of the army, and appointments to and promotions therein, so far as the same may be exercised by the Crown through the Commander-in-Chief for the time being." But the true constitutional effect of this instrument (which is now no longer issued) was determined by a report of the Committee of the House of Commons which was appointed in 1860 to consider the question of military organisation. The result of their inquiry was to show that the supplementary patent, rightly construed, was a mere indication of the pleasure of the Crown that the ordinary exercise of the particular powers thereby reserved should appertain to the Commander-in-Chief, subject to the supervision of a responsible minister; and that the Secretary for War was not and could not be absolved from his constitutional responsibility for the mode of exercise of these powers.[1] The practical working of these limitations,

[1] This point is made more clear by the terms of the royal warrant of Oct. 11, 1861, the last issued on the subject, wherein,

therefore, is merely to give the Commander-in-Chief an initiative in certain acts of administration, while still leaving it necessary for him to obtain the sanction of the War Minister to the performance of these acts. This principle, for instance, as was fully admitted by the Commander-in-Chief before the Committee, is invariably respected in the case of all the higher military appointments. The Commander-in-Chief informs the Secretary for War of the persons whom he proposes to nominate to such appointments, and their names have to be approved by the Secretary for War before being submitted to the Sovereign. And even the ordinary promotions in regiments, which are made by the Commander-in-Chief without communication with the Secretary for War, are nevertheless sent to him before being submitted to the Sovereign, in order that he may have an opportunity of interfering in case any irregularity should be apparent in the step. As to the very highest posts, the command-in-chief on foreign service, etc., they are not only subject to the approval of the Secretary for War, but are in many instances made "Cabinet questions."

It is evident, moreover, from the nature of the case, that the authority of the Civil Government over the military administration must be supreme; and that, as a matter of fact, this authority must have existed in a

after reciting it to be Her Majesty's pleasure that the military command and discipline of, appointments to, and promotion in the army, "together with all powers," etc. etc., vested now or hereafter in the Commander-in-Chief, should be excepted from the department of the Secretary of State for War, it is expressly provided that such powers shall be exercised "subject to our general control over the government of the army, and to *the responsibility of the Secretary of State for the exercise of our royal prerogative in that behalf.*"

latent form even in days before the principle of ministerial responsibility had been extended to the military prerogatives of the Crown. The ultimate control over an administrative service must necessarily rest with the power to which it owes its existence; and ever since the Revolution the army has existed only by the will of Parliament. It was declared by the Bill of Rights that "the raising or keeping a standing army within the kingdom in the time of peace, unless it be with the consent of Parliament, is against law;" and this consent is never given for any longer period than a year. In each successive session of Parliament it is necessary to pass a Mutiny Act, which,—after reciting in its preamble the above-quoted provision of the Bill of Rights, and declaring that "it is adjudged necessary by Her Majesty and this present Parliament that a body of forces should be continued for the safety of the United Kingdom, the defence of the possessions of Her Majesty's Crown, and the preservation of the balance of power in Europe,"—proceeds to enact that the said force shall consist of such and such a number of men. Unless this statute were renewed the army would, *ipso facto*, cease to exist at the end of the year for which its maintenance was authorised by the Mutiny Act last passed. For there would be no legal authority to raise recruits, nor any legal means of punishing the soldiers of the existing force if they chose to desert and return to their own homes; since the military discipline to which they are amenable is itself the creation of the Mutiny Act, and unknown to and unenforceable by the common law. It is clear, therefore, as has been said, that the Parliament which creates the army must possess the ultimate control over the army,—to say no-

thing of the secondary power which it exercises through its financial functions, and its inherent right to inquire in what manner the money which it grants for the maintenance of the military service is applied.

Such, then, are the relations of the Secretary for War to the highest military authority; his relations to the Navy and the department which presides over its administration are perhaps somewhat less clearly defined, but it will be more convenient to defer the consideration of them until the constitution and functions of the Board of Admiralty come under review. As regards the Cabinet in general, the authority of the Secretary for War is, as regards this most important of his functions, strictly limited. It has already been said, for instance, that the appointments of general officers on foreign service are frequently made Cabinet questions; and it may be added that a certain class of these appointments are invariably so treated. In the event of a necessity arising for the susception of actual hostilities in any foreign country, the choice of the general officer who is to take command of the force to be despatched devolves, in the first instance, upon the whole Cabinet. The Secretary for War then communicates their decision to the Commander-in-Chief, with instructions to him to take the pleasure of the Sovereign thereupon. The Crimean War, as being the first war waged since the creation of the new Secretaryship of State for the department of military affairs, may be taken as fixing the constitutional practice on the subject; and it was stated by the Duke of Newcastle, in his evidence before the Sebastopol Committee, that not only were the selections for the command-in-chief and the principal divisional commands in the Crimea

made subject to the approval of ministers in Cabinet Council; but that all important operations—the number of troops to be sent out, and so forth—were, as a matter of course, submitted to the Cabinet. This practice has been followed in all the minor wars in which the country has been engaged from that time forward; so that we may now say that in respect of all the more important duties which devolve upon him when an actual state of hostilities exists, the departmental independence of the Secretary for War is exchanged for the position of military adviser of the Cabinet, possessing, indeed, a consultative voice of exceptional moral authority in their deliberations, but unable, to any further extent than that of his single vote, to influence their ultimate decision.

His responsibility to Parliament has, as is pointed out above, been secured for many years past, directly and by his personal presence in the House of Commons. Like the other Secretaries of State, however, and indeed most of the chiefs of the great departments, he has an Under Secretary, who, as a rule, of late years has been selected from the House of Lords, and has represented the Office in that branch of the Legislature. As a rule the Under Secretary either is or has been a military man; and as the Secretary for War is almost invariably a civilian, it has been thought advisable that either the Under Secretary or some other departmental officer in Parliament should be professional, and capable of affording assistance to his chief in parliamentary discussions of military matters. With reference, however, to this question of responsibility, it should be borne in mind that on the abolition of the office of the Secretary at War (who was strictly a financial officer representing the Treasury), the

oversight and control over army *expenditure* reverted to the last-named department, which still remains directly responsible for the same, as, indeed, it is for the outlay of the other great spending department of the State, and generally for the financial administration of all the other offices of the Government.

CHAPTER VIII.

THE INDIA OFFICE.

THE fifth and last created branch of the Secretariat of State is that entrusted with the direction of the government of India.

The extraordinary history of the events by which this vast peninsula became originally the possession of a company of private traders is, or ought to be, well known to every Englishman, and it is not necessary to trace here either the territorial growth of our Indian Empire, or to recount in detail the various political arrangements whereby English Governments endeavoured from time to time to bring the increasing acquisitions of the East India Company under more effective State control. For all purposes explanatory of its present system of administration, it will suffice to limit our retrospect on this subject to the last hundred years of British rule, and to take as a starting-point the great reconstruction of its government effected by Mr. Pitt in 1784. Before that date the administration of the affairs of India by the Court of Directors of the East India Company had been subjected to a certain amount of control on the part of the Home Government; but the supervision of the Executive had not been vigilantly, nor could it perhaps have been very effectively, exercised. The year

1783 witnessed Mr. Fox's abortive attempt to pass an Act for reconstructing the system of Indian government, —an attempt of which the failure led to the downfall of the Coalition Ministry; and in August of the following year the bill introduced by his great rival, with the same object, became law. Its main principle consisted in the establishment of a Board of Control, composed of six Commissioners, to be appointed by the Crown (instead of, as in Fox's scheme, to be nominated by the House of Commons), all members of the Privy Council, and of whom the Chancellor of the Exchequer and one of the Principal Secretaries of State were to be two. These Commissioners were not to interfere in commercial matters, but in all other matters their powers were most extensive. They were vested with a control and superintendence over all civil, military, and revenue officers of the Company, and the Directors were obliged to lay before them all papers relative to the management of their possessions, and to obey all orders which they received from them on points connected with the civil and military government or the revenues of their territories. The Court of Directors had no power to send any orders regarding their civil and military government without the sanction of the Commissioners; but the Commissioners might, if the Directors neglected to send true copies of their intended despatches upon any subject within fourteen days, send of themselves orders and instructions relative to the civil or military concerns of the Company to any of the presidencies of India; and these instructions the Court of Directors were in such case bound to forward. If, however, the Commissioners forwarded any orders to the Court of Directors

on points not relating to the civil or military government, or the revenues of the territorial possessions of the Company, the Directors might appeal to the King in Council.

But the most important of the powers reserved to the Executive was that of acting, whenever circumstances seemed to demand it, through a Secret Committee, which the Court of Directors were called on to appoint, and which was not to exceed the number of three. In all cases in which secrecy was requisite, and particularly such as related to war or peace with the native princes of India, the Commissioners of the Board of Control had the power of sending their orders to the local Government of India through this Committee (which in such a case acted as the mere passive vehicle of their instructions), and without either consulting the Court of Directors, or even informing them of what had been done. By the clause in which the Commissioners were authorised to transmit orders through this Committee, and to receive answers under the same concealment, the Board could interrupt and suspend, as often as they thought fit, the powers of the Court of Directors. In fact, as far as related to all the higher functions of government, the Court of Directors was practically reduced to three, and these three, in conjunction with the President of the Board of Control (for the two other great ministers nominated to the Board but rarely found time to attend it) constituted the Indian Executive.

For over seventy years this system of double government remained in force, but its defects and inconveniences were increasingly noticed and deprecated; and in 1858, immediately after the great Indian Mutiny, it was

resolved to abolish it. An Act was passed vesting in Her Majesty the territories then under the government of the East India Company, and enacting that, save as otherwise provided by the said statute, "all the powers and duties then exercised or performed by the East India Company, or by the Court of Directors or Court of Proprietors of the said Company, either alone or by the direction or with the sanction or approbation of the Board of Control, should in future be exercised and performed by one of Her Majesty's Principal Secretaries of State." The statute goes on to enact the establishment of a Council, consisting of fifteen members, to be styled the Council of India, and proceeds to provide for the method of their appointment, their qualifications, and the mode of filling up vacancies in their number. They were to hold their offices by the most stable form of official tenure, namely, "during good behaviour," and to be, like judges, removable therefrom only by address from both Houses of Parliament. No member of this Council was to be capable of sitting and voting in Parliament. The Council thus appointed is, by the 19th section, empowered, "under the direction of the Secretary of State, and subject to the provisions of the Act, to conduct all the business transacted in the United Kingdom in relation to the government of India;" and the Secretary of State is authorised "to divide the Council into Committees for the more convenient transaction of business, and from time to time to rearrange such Committees, and to direct what departments of the business in relation to the government of India under the Act shall be under such Committees respectively, and generally to direct the manner in which such business shall be

transacted." He is further invested with authority to appoint and remove a Vice-President of the Council. Five members of the Council are necessary to form a quorum. It may hold meetings notwithstanding any vacancy in its members; and such meetings are to be convened and held when and as the Secretary of State shall direct, but at least one such meeting must be held every week.

The Council thus constituted advises and assists the Secretary of State in the transaction of Indian business, and, as regards two classes of questions, controls his acts. *All appointments to the Supreme Council for India, or to the Councils of the several Presidencies*, and *all appropriations of the Indian revenues*, are made subject to the consent of this Council, who, however, exercise only a power of veto, and can no more take any positive action in these matters without the assent of the Secretary than he without theirs. Other questions not belonging to these two categories are submitted to the Council, and they declare their opinions thereon; but as regards all such other questions, the Secretary of State may overrule the decision of the Council; although, in that case, he must afford them an opportunity of recording their reasons for dissenting from his acts, and must himself record his own reasons for disregarding their advice. He may also introduce Bills into Parliament relating to Indian affairs without consulting his Council thereupon.

The Legislature, moreover, has deemed it wise to give him the same ultimate powers of summarily authoritative and secret action which were possessed by the President of the Board of Control in his relations with the Court of the old East India Company; and the

Secretary of State may despatch letters and issue orders directly to the officials in India through what is known as the "Secret Department," corresponding to the "Secret Committee" of the Court of Directors. The power, however, is of course but rarely resorted to, and as a matter of ordinary routine almost everything goes through the Council.

In pursuance of one of the provisions above cited, the Council has been divided into eight Committees—namely, the Revenue, the Judicial, the Public Works, the Political, the Military, the Finance, the Statistics and Commerce, and the Stores Committee. Each Committee is charged with its own particular branch of administration, and is required to advise upon drafts of despatches, to frame answers thereto for the consideration of the Secretary, and generally to discuss all matters referred to them by the whole Council or by the Secretary of State.

It follows from the above review of the composition and functions of the Indian Department that the constitutional position of the Secretary of State for India differs in a somewhat important respect from that of any other minister. Speaking generally, he is the person responsible to Parliament for the administration of India, and must be prepared to defend in Parliament his conduct and policy, and also to determine upon his own responsibility all questions affecting the welfare and good government of that country which have not been specially reserved by Parliament for the decision of other authorities. Certain questions, however, having, as we have seen, been distinctly reserved by Act of Parliament

for determination by a majority of the Indian Council, —viz. appointments to the Supreme or Presidential Councils, and grants of money out of the revenues of India,—it results, of course, that a Secretary of State for India, if consulted by the Council upon either of these questions, cannot be held personally accountable for the course actually adopted. It may at first sight appear, and no doubt it is theoretically the fact, that by thus throwing responsibility upon a body not represented, and indeed statutorily disqualified from direct representation, in Parliament, the Legislature has parted with its powers of constitutional control. Practically, however, this is not the case. The proper mode of regarding the Council for India is as a body deputed by Parliament to exercise a species of quasi-parliamentary control in certain matters over the Secretary of State for India, and the authority so delegated is, of course, liable to be revoked. The true position of the Council was beyond doubt accurately defined by an eminent Ex-Secretary of State for India in a debate which took place on the subject some fourteen years ago. "The House of Commons is so overwhelmed with business nearer home that it has no opportunity of making itself acquainted with all those vast fields of knowledge that will enable it to exercise an efficient influence over the Secretary of State for India. Therefore it has instituted this Council to be its deputy, as it were, to watch him, and see that the powers placed in his hands are not abused. It ought, however, to be clearly understood that the moment the House steps in and expresses an opinion on a subject connected with India, that moment the jurisdiction of the Council ought to cease. It is not to be endured in this constitu-

tional country for a moment that the Council should set itself against the express opinion of the House." Were it otherwise, "their large powers would speedily be restricted." It being understood that the "expression" of its "opinion" by the House means its expression through the formal vote of a majority of the House, and not any informal declaration of the views of a section, however numerous, of its members, there is no doubt that this statement correctly describes the constitutional relation subsisting between Parliament and the Council for India.

The manner in which the House of Commons exercises its general controlling power over the proceedings of the Indian Government in ordinary cases may be seen by referring to the debates in the House on August 2, 1867, concerning the famine in Orissa, and the despatch of the Secretary for India respecting the conduct of the local authorities upon that emergency; and on April 20 and 24, 1868, on the policy and conduct of Government in advancing loans of public money to the Madras Irrigation Company. The extent and the limits of its ordinary authority are marked by these two circumstances—(1) that although the whole of the Indian revenues are at the disposal of the Secretary of State and the Council, to be by them drawn upon for all expenditure required for the service of India, they must make known to Parliament all expenditure incurred, and may not increase the debt of India without the sanction of the House of Commons; and (2) that, on the other hand, although the Indian Budget is annually laid before that House to enable its members to offer suggestions, ask for information, and generally criticise the policy of

the Government in relation to India, the financial statement is followed by no application for any vote to control or influence the taxation of India, but merely, by certain formal resolutions, setting forth the actual revenue and expenditure in India for the current year. This, however, does not preclude the moving of abstract resolutions condemning or recommending the resort to particular means of raising revenue.

The Secretary for India has frequently, during the past years, been a member of the Upper House, and in such cases he is represented in the House of Commons by the Under Secretary, whom the Act, in one of its provisions above quoted, authorises to sit in that assembly.

CHAPTER IX.

THE ADMIRALTY.

THE Admiralty is another of those departments which, like the Treasury, have been formed by putting the office of an ancient and high officer of State "into commission." What the Treasury is to the long-suspended office of Lord High Treasurer, that the Admiralty is to the similarly situated office of Lord High Admiral. The first appointment to this post of which any historical record exists was made in 1385 in the person of Richard Fitzallen, Earl of Arundel and Surrey; but it is only from the year 1405 that an unbroken series of Lord High Admirals can be traced. In 1636 the office was for the first time put in commission; and under the Commonwealth the affairs of the Admiralty were managed by a Committee of Parliament. At the Restoration the Duke of York, afterwards James II., was appointed Lord High Admiral, and held the office until 1673, applying himself to its affairs with a diligence to which his Secretary, Pepys, as readers of the famous *Diary* will recollect, gives ample testimony. On his accession to the throne in 1686 he again declared himself in Council to be Lord High Admiral, and retained the post until his abdication in 1688. In the interval between his resignation and resumption of the office,

and again on the accession of William III., it was put into commission. An Act was passed by the Revolution Parliament in 1690 for the purpose of defining and declaring the authority of the Commissioners whom it might please the Crown to appoint for the execution of the office; and two years later we find the House of Commons addressing the Crown with the view, apparently, of getting this Act put into operation. A resolution was passed to the effect that His Majesty "is humbly advised to constitute a Commission of Admiralty of such persons as are of known experience in maritime affairs; and that for the future all orders for the management of the fleet do pass through the Admiralty that shall be so constituted." The Admiralty as constituted in pursuance of this resolution became substantially the department which now manages the affairs of the Navy, and which, except for some few years in the last and in the present century, has continued ever since 1690 to execute the office thus put into commission.

The office of Lord High Admiral was revived for a few months in 1702 in the person of Lord Pembroke; it was held for six years after Lord Pembroke's removal by Queen Anne's consort, Prince George of Denmark; and it was again, in 1827, conferred upon H.R.H. the Duke of Clarence. But the results of this last experiment gave so little satisfaction that eighteen months later the Duke of Wellington, then Prime Minister, deemed it expedient to advise the revocation of the Lord High Admiral's patent, and to reconstitute the Board of Admiralty on the old basis.

The Lords Commissioners who form the Board of Admiralty are now four in number, and consist of a First

Lord and three Junior Lords. They are appointed by letters-patent under the Great Seal, which describe them as "Commissioners for executing the office of Lord High Admiral of the United Kingdom of Great Britain and Ireland, and the dominions, etc., thereto belonging, and the territories or parts beyond the seas possessed by any subjects." Under this patent the Board of Admiralty has control over the administration of the entire naval force of the empire (though not, as will be presently seen, of the movements of that force) both at home and abroad; it has the command of the royal marines, and the direction of the royal dockyards, and of the vast body of workmen employed therein in shipbuilding, and in the preparation of stores and material for the use of the naval service.

The First Lord of the Admiralty is always a Cabinet Minister; and of the Junior Lords two are usually "naval," and one "civil;" the last having, as a rule, a seat in one or the other Houses of Parliament. Two secretaries are attached to it, one permanent and the other "political," the latter of whom represents the department in the House of Commons when the First Lord happens to be a member of the Upper House.

The Board of Admiralty, unlike the Treasury Board, is a really deliberative body; for although the First Lord possesses, in spite of the nominally co-ordinate powers conferred upon his colleagues by this patent, a supreme authority, he is bound to carry the naval lords with him in his measures; and he would therefore, in the event of finding any of them irreconcilably opposed to his policy, be compelled either to modify it in deference to their objections or to require them to resign. In

practice, however, this necessity does not often arise, for by soliciting and obtaining the sanction of the Cabinet and the Sovereign to his measures, he can once more place them before his dissentient colleagues in so authoritative a form that the latter will usually withdraw their opposition and submit to be overruled.

The departmental relation of the Admiralty to the Cabinet has next to be considered; and the most important point to note in this matter is the distinctly subordinate position which it holds as compared with that, for instance, of the War Department. Its chief is not a Secretary of State; it is a mere Executive Board, and as such the exercise of its control over the movements of the navy is largely, though not entirely, subject to directions which may be given to it not only by the Cabinet as a whole, but even by certain other departments over which Secretaries of State preside. Thus, for example, the strength of naval squadrons upon colonial or foreign service is determined respectively by the Colonial and Foreign Offices; and any one of the Principal Secretaries of State, when conveying the Royal commands to the Admiralty for the execution of any service which the Government of the country might require, would have to be as strictly obeyed by that department as they would be *mutatis mutandis* by the Horse Guards.

The position of the Admiralty is indeed one of more independence than the Horse Guards in this respect, that the former possess, under their patent, the power of moving ships, whereas the Commander-in-Chief, to quote the *dictum* of the Duke of Wellington, "cannot move a corporal's guard from London to Windsor

without the authority of a Secretary of State." But apart from this special attribution of authority, the Admiralty may be regarded as holding the Queen's ships as continually at Her Majesty's disposal, and in readiness to order them to the performance of any duty which the needs of the State, as determined by other departments, or the Cabinet at large, may appear to require. Thus, if the Foreign Office require to send a fleet on any particular service, or the Colonial Office to despatch a ship of war to a colony, the Queen's pleasure would be in each case conveyed to the Admiralty by the respective Secretaries of State for these two departments. These orders once given, the Admiralty is placed in communication with the particular department by which its services have been put into requisition, and becomes directly responsible for all the details of the work to be performed. The complete departmental subordination of the Admiralty was illustrated in the last century, when Lord Chatham took the correspondence with naval commanders into his own hands, and is said to have required the First Lord of the Admiralty to sign instructions which he did not even allow him to peruse. And again in the present century, on the occasion of the secret expedition to Copenhagen, the Board of Admiralty, in a document signed with their own hands, formally divested themselves of all control and even cognisance of the movements of the ships detailed for that service, directing the admiral in command to receive his instructions from, and communicate directly with, the Secretary of State. Such an assertion of the supreme authority of the Executive is not, perhaps, likely to recur in these times; but the value of the precedent as determining

the constitutional position of this department is not thereby affected.

Within the sphere of his departmental authority, however, the functions of the First Lord of the Admiralty are of a highly important and responsible character. His duties include the general supervision and control of every department of the service; the consideration and determination of all political questions affecting his department, such as those connected with the suppression of the slave trade; the settlement of all matters of naval expenditure, and the preparation of the naval estimates, which have to be signed by him; all appointments to naval commands, and promotions therein, and all civil appointments connected with the Admiralty; all honours and distinction to naval officers, and other like matters.

To the First Lord of the Admiralty, as to most of the chiefs of the other great departments, a parliamentary Under Secretary is attached; but the rule of late years having been to select the director of the naval as of the military administration of the country from the Lower House, the amount of aid rendered by this subordinate minister to his chief in Parliament will in this case depend rather upon arrangements of mutual convenience than upon constitutional requirements. Should the First Lord, however, be a member of the Upper House (as is the case at present), the position of the parliamentary Secretary, as representing this department in the House of Commons, and prepared to furnish information as to all the multifarious details of its immense business, is one of very great importance. Departmentally considered, his position is subordinate to that of the Junior Lords, as he has no consultative voice (at

least as of right) at Board meetings; but being in constant and confidential communication with the First Lord (whose authority, as has been pointed out, is in the last resort supreme), his effective influence in the department may, if he is a man of energy and ability, be very considerable. His most important duty in the House of Commons, when he represents the Admiralty in that branch of the Legislature, is of course that of moving, explaining, and defending the Navy estimates. Under the general direction of the secretaries, the Admiralty Office is superintended by six principal officers—to wit, the Controller of the Navy, in whom is vested the entire management of the dockyards; the Accountant-General of the Navy; the Storekeeper-General, who checks the supply of stores and timber to the Controller of the Navy; the Controller of Victualling; the Director-General of the Medical Department; and the Director of Engineering and Architectural Works (who constructs the barracks for the marines, and all the great buildings connected with the dockyards). All these officers are independent of each other, but are responsible to the Board for the general conduct and special details of the duties of their respective departments. They are always consulted upon every important measure affecting those duties, but they are subject to general directions from the superintending lord, as to any particular service which they may be required to undertake. Whenever occasion calls for it the First Lord himself communicates directly with these officers. With the Controller of the Navy such communications are most frequent, affording him constant opportunities of laying before the First Lord his views upon the state

of the ships of the Navy, and the measures he may deem necessary to maintain them in an efficient condition. There are also other minor but important departments, such as that of the Director of Transports, the Registrar of Contracts and Public Securities, and the Hydrographer. Each department is placed under the direction of one of the Junior Lords.

CHAPTER X.

THE BOARD OF TRADE.

THE earliest recognition of the need of a Department of Trade is usually dated from the time of Charles II., but the first suggestion of such a department appears to have been given under the Protectorate. In 1655 Cromwell appointed his son Richard, "with many lords of the council, judges, and gentlemen, and about twenty merchants of London, York, Newcastle, Yarmouth, Dover, and other places, to meet and consider by what means the traffic and navigation of the Commonwealth might be best promoted and regulated, and to report on the subject." Nothing is known of the results of this step, and it is probable that not much came of it. This, at least, is to be gathered from the circumstance that the Dutch, who were at first alarmed at this sign of energy on the part of their commercial rival, appear to have been reassured by subsequent observation of the course of events. A curious piece of evidence to this effect is preserved in the records of the State Paper Office in the form of a despatch from the Dutch minister in London to the States-General, describing his relief at the finding that the movement for the promotion of British trade

had come to nothing.[1] But though Cromwell's efforts in this direction have borne no very substantial fruit, there are, nevertheless, traces to be found of the existence of some kind of Trade Department before the definite establishment of the Councils of Trade and Plantations under Charles II. The records of the Exchequer contain the entry of an order for payment to be made of a certain sum to Walter Frost, treasurer, "for the Council's contingencies for satisfying the salaries of the officers attending the Commissioners of Trade."

It is on the whole, however, correct to say that the first attempt at the establishment of a Trade Council which had any well-defined results took place under Charles II. Its circumstances, which have been more fully described in treating of the Colonial Office, need only be briefly recapitulated here. It will be remembered that by two Commissions in 1660, Charles II. established two separate Councils, one for trade, and the other for foreign plantations, which two Councils were afterwards united into a "Board of Trade and Plantations;" that this Board was abolished in pursuance of a resolution moved by Mr. Burke in 1780,[2] and its business, so far as trade was concerned, transferred by 22 Geo. III., c. 82, to "such committee or committees as his Majesty should appoint." The affairs of trade were then managed for a time by an informal Committee of the Privy Council, and it was not till four years after-

[1] Thus runs the passage: "A Committee of Trade was some time since erected in London, which we then feared would be very prejudicial to our State, but we are glad to see that it is only nominal; so that we hope in time those in London will forget that ever they were merchants."

[2] See Chap. VI.

wards that this branch of the Government once more had a regular establishment assigned to it. In 1786 an order in Council was passed creating the Committee of Council for Trade,—an offshoot of the Privy Council, which, instead of remaining locally and nominally attached to its parent stock, as has been the case, we shall hereafter see, with another similar outgrowth—the Education Department—has undergone complete severance from it, and has long ceased to be known in popular language as a Committee of Council at all, but is styled simply the Board of Trade. At its creation in 1786 an establishment of clerks—small, of course, as compared with the clerical staff of the present Board—was attached to it, and its business appears to have consisted in the consideration of commercial treaties, of colonial Acts affecting trade, and of import and export duties, prohibitions, etc., affecting the trade of the country. The business of the Board remained unaltered in principle till the opening of the free trade era in the middle of the present century; and during the greater part of this period of sixty years its duties seem to have been as follows, viz. to advise the Foreign Office on commercial questions arising out of treaties with Foreign States; to advise the Colonial Office as to the allowance of the Acts of the various Legislatures so far as related to matters of trade; to advise the Treasury on matters connected with customs and excise; to advise the Privy Council Office with regard to the grant of commercial charters by the Crown; to prepare orders in Council under various Acts of Parliament on matters relating to trade; to collect and revise the statistics relating to trade, and to digest and abstract the national statistics generally. These,

together with the duty of preparing and superintending through Parliament the Bills arising out of the business of the department, constituted, until a comparatively recent period, nearly the whole of the duties of the Board of Trade. But within this period, the growth of joint-stock companies, the establishment and development of railways, the rapid increase in shipping, and other extensions of industrial progress, have from time to time necessitated various legislative measures, some of a constructive nature, others relating to regulation and inspection, which have thrown many new administrative duties on the Board of Trade. On the other hand, however, one of the most important of the original functions of the Board, viz. the negotiation of commercial treaties, was in 1872, after inquiry by a Parliamentary Committee, transferred to a newly created department in the Foreign Office.

In the last century, and at the beginning of this, the mode of doing business at the Board of Trade appears to have been by minutes passed at a Board consisting of the members of the Committee of Council, or some of them. From the minute-books for the years 1786-97 it appears that members of the Committee, varying from one to seven or eight, actually attended, the President of the Board being always one, and sometimes acting alone. This mode of doing business, however, gradually became a fiction; and now, like that of the Treasury, and unlike that of the Admiralty, the Board of Trade has practically ceased to exist as a deliberative body. It is formally constituted by order in Council at the commencement of each reign, as a Committee consisting of a President and certain *ex officio* members, including the First Lord of the

Treasury, the Chancellor of the Exchequer, the Principal Secretaries of State, the Speaker of the House of Commons, and, of all other functionaries, the Archbishop of Canterbury; but, considered as an executive department, the Board of Trade now means nothing more than the President and his official staff, with whose assistance he transacts all the business of the office. This staff includes (besides the usual "permanent" and "parliamentary" officials) four assistant secretaries, one for each of the four later departments into which the office has been successively subdivided. Altogether, the Board consists of five departments, viz.—(1.) The Statistical and Commercial Department; (2.) The Railway Department; (3.) The Marine Department; (4.) The Harbour Department; and (5.) The Financial Department.

(1.) The Commercial Department still contains all that is left of the old consultative Board of Trade. In the years immediately prior to 1871-2 (when, as has been noted, the negotiation of commercial treaties was, after inquiry, transferred to a newly-created department of the Foreign Office), the remains of the old consultative business of the Board of Trade were amalgamated with the Statistical Department. The consultative business now consists in giving advice to other departments on commercial matters, if and when they think fit to seek it; and the business has of late years, it seems, shown a decided tendency to increase. The Statistical Department was created in 1832. Its business includes the preparation of certain general digests or abstracts of statistics relating to the United Kingdom, the colonies, and foreign countries; and it has the supervision of the monthly and annual trade accounts, and prepares, with

the assistance of other departments, statistics relating to the special subjects of railways, agriculture, cotton, and emigration. But since 1872, when the Commercial and Statistical Departments were amalgamated, certain functions originally belonging to its commercial branch (such, for instance, as the business relating to the registration of designs, which has now been handed over to the Patent Office) have been transferred to other departments.

(2.) The Railway Department was originally constituted in 1840; and although in 1846 an Act was passed constituting a separate Board of Railway Commissioners, the powers of this body were re-transferred to the Board of Trade by an Act of five years later, and have ever since been exercised by that department. By the above and various other Acts many duties connected with railways have been imposed upon the Board of Trade, the principal of which are the inspection of railways and their works before they are opened to the public, and the inquiry into accidents as they occur. Besides these it has numerous other duties, such as that of reporting to Parliament on the increase of rates, and on "level crossings;" of examining and approving bye-laws; of granting compulsory power to enter on land when the public safety requires it; of appointing arbitrators, umpires, etc. etc. It has also power to grant certificates in certain cases for making railways, and discharges also many duties under private Railway Acts. To this department belongs also the inspection of tramways, and the approval of the bye-laws relating to them, as well as the preparation and introduction into Parliament of Provisional Orders for new tramways. It has

the management and control of various matters connected with the metropolitan gas companies. The Joint-Stock Companies' Registration Office is under this department, and so far as commercial charters are still a business of the Government, they fall to be dealt with here. But the amount of the business of this department of the Board of Trade as a Railway Department properly so-called has been somewhat affected by the establishment of the Railway Commissioners Court in 1873, and the reference to it of many disputed points which were formerly referred to this department, or to arbitrators appointed by it.

(3.) The Marine Department was first created as a separate branch of the Board of Trade in 1850. Various matters in connection with nautical questions had, previously to this date, been from time to time referred to the Board; but the Acts passed in 1846, and again in 1848, for the inspection and survey of passenger steamers, threw upon it certain executive duties specially connected with merchant shipping. In 1850, after the repeal of the Navigation Laws, much attention was given to the *personnel* of the Merchant Navy, and the result was the passing of the Mercantile Marine Act of that year, by which was established a system of compulsory examination for masters and mates, and of shipping offices for the engagement and discharge of seamen. To administer this Act a new branch within the department, assisted by professional advice, was instituted; which, having in subsequent years attracted to itself a large amount of work connected with merchant shipping, became speedily the largest in the office. So greatly, indeed, did its business increase, that it became necessary

in 1866 to divide this department of the Board into three, or rather, perhaps, to detach from it certain of its functions, and to vest these in two other new departments; so that to the Marine Department, which is concerned specially with ships and seamen, there was added the Harbour Department, charged with the business appertaining to lighthouses, pilotage, harbours, and the physical adjuncts of navigation, and the Finance Department, which is concerned with the money business of the whole office.

The specific duties of the Marine Department of the Board of Trade in connection with ships and seamen are too multifarious for enumeration here, but the bulk of them may perhaps be generalised as designed to provide for the following objects:—the health, discipline, and proper treatment of ships' crews, the professional competency, care, and conduct of those in command of them, and the condition, equipment, and management of their ships.

(4.) The Harbour Department of the Board of Trade has had its origin explained above; but it should here be added that so many other matters have from time to time been added to its regular duties, that its present name has become somewhat of a misnomer. For, in addition to its having charge of the foreshores belonging to the Crown, and to its above-mentioned functions in connection with harbours, lighthouses, pilotage, etc., this department also executes the duties belonging to the Board in respect to the administration of the Weights and Measures Act; that is to say, it provides and maintains the standards of measure and weight, it tests and examines the weights and measures used in trade and for scientific

purposes, and from time to time advises the various local authorities who may seek its advice and assistance for the information of their local inspectors. It also administers the Coinage Act, and provides and issues standards to the Mint and Assay Office for determining the purity and weight of the gold and silver coin of the realm. Under the Sale of Gas Acts, this department provides and maintains standards by which gas is measured for gas-lighting purposes; and under the Petroleum Act of 1879 it has to discharge the duty of testing the apparatus for ascertaining the temperature at which petroleum gives off an inflammable gas.

(5.) The Financial Department of the Board of Trade was first established as a branch of the Marine Department in 1851; it subsequently became a separate department, and it now deals not only with the general accounts of the Board of Trade and its subordinates, but with those of a variety of funds established at various times for the benefit of seamen and their families. The business of the Financial Department is administrative, and not simply that known as accounting. It has to control receipts and expenditure in the different branches of business above referred to, as well as to keep its accounts. In addition to the above it is entrusted with the delicate and responsible duty of receiving, examining, and presenting to Parliament the accounts of Life Assurance Companies.[1]

The provisions for ensuring the responsibility of the

[1] For the foregoing account of the internal administrative arrangements of this office, the writer is indebted to a valuable memorandum prepared by Mr. Roscoe and revised by Mr. T. H. Farrer, the present Permanent Secretary to the Board.

Board of Trade to Parliament have been somewhat curiously varied in the course of its history. The President of the Board is necessarily, of course, a member of one or other branch of the Legislature, but down till a recent period he was by no means invariably, or even perhaps usually, a member of the Cabinet.

In accordance, however, with the recommendation of a Committee on Foreign Trade in 1864 that he should have a place therein in order to secure due consideration for his advice and opinions on commercial matters, this office has ever since been held by a Cabinet Minister.

There was originally also a Vice-President of the Board of Trade, who was a Privy Councillor and a member of the administration, though without a seat in the Cabinet; but the arrangement not having been found to work well in practice, this office was abolished in 1867, and the managing staff now consists (under the president) of two secretaries, one of them with a seat in Parliament, and the four assistant secretaries above referred to. In cases where the President was a peer the parliamentary secretary would of course be selected from, or provided with, a seat in the House of Commons.

CHAPTER XI.

THE LOCAL GOVERNMENT BOARD.

THE department which bears this title may lack the political dignity and historic traditions attaching to other offices of the administration; but it might be said with a certain truth that it yields to none or very few of them in real importance to the community. Certain it is, at any rate, that there is no department upon the efficient discharge of whose functions so many material interests —the comfort, the well-being, and even the lives of so large a number of individuals—depend. In its present shape and under its present title the Local Government Board is an office of extremely recent institution; it is little more than ten years, indeed, since it came into existence; one large branch of its very extensive powers —the supervision of the vast national system of poor relief—having been up to that time vested in the now extinct Poor Law Board. In order, therefore, to comprehend the general nature of this portion of its duties it will be necessary to take a brief survey of the constitution and powers of the body which it has replaced.

The Poor Law Board was created in 1834 by the great Statute (4 and 5 William IV. c. 76), establishing the new Poor Law system, and was in the first instance

hardly a branch of the Central Executive at all. The Commissioners constituting it had none of them a seat in Parliament, at least in their official capacity; and their proceedings were only brought indirectly under the review of the Legislature through the medium of the Home Secretary, to whom they periodically reported. The Commission was at first appointed only for a limited period. This period, however, was extended by several Acts, and in 1847, the date last fixed for its expiration, it was found necessary, in view of the increasing importance of the work, the complexity of its details, and the inconvenience of the imperfect representation of the Board in Parliament, to reconstitute it, and place it under the presidency of a responsible minister eligible to a seat in the House of Commons. This change was effected by the 10 and 11 Vict. c. 109, which enacted that the Board should consist of a President to be appointed by the Queen, and of four Cabinet Ministers, who were to be members *ex officio*, the Lord President of the Council, the Lord Privy Seal, the Home Secretary, and the Chancellor of the Exchequer.

Such were the powers possessed and exercised by the Poor Law Board down to the date of its abolition in 1871, when they were transferred by the 34 and 35 Vict. c. 70, to the newly-created body in whom they are at this moment vested—to wit, the Local Government Board. But the changes effected by the statute in question were far more extensive than this, and the functions committed to the new department were far more varied and onerous than those which the old Poor Law Board had been wont to discharge. The Local Government Board is something more than the successor of a single extinct

organisation; it is the transferee of certain of the functions of two other administrative bodies. It consolidates as well as replaces, and besides taking over all the manifold duties connected with poor relief, it has gathered into its hands the whole mass of complicated powers formerly vested in a variety of independent authorities for the preservation of the public health.

The statute by which the Local Government Board was constituted recites in its preamble that it is "expedient to concentrate in one department the supervision of the laws relating to the public health, the relief of the poor, and local government;" and proceeds to enact that "from and after the establishment of the Local Government Board, the Poor Law Board shall cease to exist, and all powers and duties vested in or imposed on the Poor Law Board by the several Acts of Parliament relating to the relief of the poor, or vested in or imposed on one of Her Majesty's Principal Secretaries of State "by certain Acts (enumerated in one of its schedules), or vested in or imposed on Her Majesty's Privy Council by certain other Acts (enumerated in another schedule), be transferred to and imposed upon the Local Government Board." The department, the Act continues, "shall consist of a President to be appointed by Her Majesty, and to hold office during her pleasure; and of the following *ex officio* members, that is to say, the Lord President of the Council, all the Principal Secretaries of State, the Lord Privy Seal, and the Chancellor of the Exchequer." The schedules referred to enumerate seventeen Acts conferring powers and imposing duties upon the Home Office, and seven Acts similarly empowering and instructing the Privy Council; all

which assemblage of powers and duties, together with any others created by the Acts amending the statutes so enumerated, were thenceforth conferred and imposed upon the new department.

The advantages of this change it would be difficult to overrate. At the time of the creation of the Local Government Board, the score or so of sanitary statutes above referred to, which were administered locally by a variety of intersecting and overlapping municipal and parochial authorities, were subject to a scarcely less complex and confused jurisdiction at headquarters. The division of the central authority between the Poor Law Board, the Privy Council, and a branch of the Home Office known as the Local Government Acts' Office, was productive of extreme inconvenience, uncertainty, and circuity in the enforcement of the law of public health; and it constituted a distinct and important advance in our methods of administration to bring the whole of these multifarious functions under the control of a single head responsible directly to Parliament. For the Local Government Board, it is perhaps unnecessary to say, is, like the Board of Trade, a Board only in name. In practice its whole administrative work is performed by its president and his staff of secretaries and clerks; provision being made against the necessity of any collective action by the provision in the Act to the effect that "all rules, orders, and regulations made by the Local Government Board shall be valid if made under the seal of the Board, and signed by the president or one of the *ex officio* members, and countersigned by a secretary or an assistant secretary."

The local working of the various institutions over

which this department presides—whether in connection with the relief of the poor, the preservation of the public health, or the improvement of towns, etc.—will be treated of in more detail in another volume of this series. To give any account of the sanitary code itself—of which the last great consolidating statute contains no fewer than 343 clauses—would of course make too excessive demands upon the space at my disposal; but the direct relations of the system of local government to the Central Executive, at its point of contact therewith, ought, no doubt, to be briefly dealt with here. It falls, perhaps, properly within the province of this work to examine briefly the nature and mode of exercise of the functions committed in respect of these matters to the Central Sanitary Authority. It would be wholly impossible within my limits to attempt anything like an enumeration of its multifarious powers and duties; but they may be said to divide themselves, broadly speaking, into three categories; and it must suffice here to classify them thus, with the addition of a few illustrative examples under each head.

The functions, then, of the Local Government Board may be divided into (1.) Initiatory; (2.) Remedial; and (3.) Supervisory.

(1.) *Initiatory.*—The Local Government Board is empowered by statute to perform *of its own motion* a variety of acts in various localities without reference to the local authorities thereof; such acts being in the nature, sometimes of directions or orders issued to such authorities, and sometimes of regulations or restrictions imposed, over the heads of the local authorities, directly upon the inhabitants of such districts themselves.

Thus, for instance, they may require the local authority of a particular district to undertake the removal of nuisances, and to do other specific acts necessary for the preservation of the public health; or, operating directly upon the inhabitants of such district, they may make regulations for preventing the spread of infectious disease, or prescribe areas within which certain already existing statutory provisions may apply; declaring, for instance, that provisions originally applicable only to urban districts shall be in force in rural districts, and investing the rural authority with the powers *ad hoc* of the urban authority.

(2.) *Remedial.*—The Local Government Board, in addition or rather by way of necessary supplement to its mandatory powers over local authorities, has the power of stepping in to make good the default of such authorities by its own immediate action.

Thus, for instance, on complaint that a local authority has neglected the sewage arrangements or the water supply of their district, the Local Government Board, on being satisfied of the justice of the complaint, may make an order upon the defaulting body to perform their duty within a limited time; and, if it be not performed within such time, may appoint some person to perform it, and direct that the expenses of the work, and a reasonable remuneration to the person superintending such performance, shall be paid by the authority in default; and any order made for the payment of such expenses and costs may be removed into the Queen's Bench Division, and be enforced in the same manner as if it were an order of that Court.

(3.) *Supervisory.*—The Local Government Board exer-

cises through its inspectors a general oversight of the proceedings of local authorities, and by thus acquainting itself with the sanitary conditions of the various districts, and with any neglect of duty on the part of these authorities, is enabled to ascertain when the necessity has arisen for the exercise of one or other of its two former functions. Further, in the case of all rural authorities and of all urban authorities, except town-councils (which in virtue of their municipal dignity are allowed financial independence), the Local Government Board exercises through its appointed auditors the same general supervision over expenditure in the matter of local sanitary administration as it does in the matter of the relief of the poor.

The parliamentary responsibility of the Board is secured by a clause of the Act, providing that the president and one of the secretaries shall be capable of being elected to and voting in the House of Commons. The office has ever since its creation been held by a member of the Lower House, who has hitherto represented it without the assistance of any secretary. It is perhaps not probable, though there is nothing to forbid a peer accepting the office, that it will be held by any but a member of the House of Commons. In the present Administration it has been associated with a seat in the Cabinet; but this has been done on grounds of political convenience alone, since its administrative duties would hardly be likely, as a rule, to raise questions of Cabinet importance.

CHAPTER XII.

THE PRIVY COUNCIL AS A BRANCH OF THE EXECUTIVE — THE EDUCATION DEPARTMENT.

THE history of the Privy Council, considered as an element in the growth of our constitutional system, has been reviewed in an earlier chapter; but it still remains to examine its modern position and functions as an executive department of the State. The important judicial duties which it discharges belong, of course, to another volume of this series.

As an executive department, the Privy Council has at various times exercised, through the medium of committees appointed from among its members, a variety of important functions, of which, however, but two now remain assigned to it. What is now known as the Board of Trade, and has become an entirely distinct department of the State, is in reality, as has been shown, an offshoot of the Privy Council, being in fact a committee of that body, originally appointed under the name of "the Committee for Trade." Again, by the Public Health Act of 1858, the Privy Council were charged with a certain supervision over the local authorities in sanitary matters, and continued down to 1871 to administer this Act through a permanent subdivision of the Privy Council

known as the Public Health Department. These powers were, by an Act of the last-mentioned year, transferred to the newly created department now known as the Local Government Board; so that the administrative functions at present actually discharged by the Privy Council are reduced to two, and those of a somewhat heterogeneous kind. They administer the various Acts for the preservation of the health of English cattle from the contagion of imported disease, and they direct the working of the great national system of education. This latter duty—by far, of course, the more onerous of the two—has been entrusted to them for nearly half a century; but its demands and responsibilities have, it is needless to say, been vastly increased by the effects of the legislation of the last eleven years. It was in 1839 that a Committee of the Privy Council, with authority to provide for the general management and superintendence of education, was first appointed. Its primary commission was to supervise the distribution of the moneys which Parliament had begun to grant a few years before for educational purposes; and the Committee, which at first was altogether subordinate to the Privy Council, consisted merely of a few Cabinet ministers, who were empowered to meet together in order to dispose of the very small sum then appropriated to the support of education. But in 1853, on the recommendation of a Royal Commission appointed to consider the subject, a "Committee of Council for Education" was created and placed under the control of the President of the Council, with a secretary, two assistant secretaries, and a numerous staff of clerks. In 1856, at the suggestion of an experienced member of the House of Commons, a Vice-Presi-

dent of the Committee of Council was appointed, upon whose functions and position more will be said presently. The members who compose the Committee of Council are usually (with the exception of the Vice-President, and this not an invariable exception) members of the Cabinet. At the present time, by declaration of the Queen in Council, the Committee consists of the Lord President of the Council, the Vice-President of the Committee of Council, the Chancellor of the Exchequer, the First Lord of the Admiralty, the Secretaries of State for the Home Department, War, and Foreign Affairs; the Chief Secretary to the Lord-Lieutenant, and the President of the Local Government Board. For Scotland a separate Committee of Council on Education is appointed, and the Lord President of the Council presides in both. The present Prime Minister is, in his capacity of Chancellor of the Exchequer, necessarily a member of a Committee which possesses so large a control over public moneys; and it is a matter of propriety to have the Home Department represented: otherwise there is no absolute necessity for any other member of the Cabinet to be placed on this Committee in mere virtue of his office.[1]

In point of utility and authority, the Committee of Council on Education may be described as standing mid-

[1] And it will be readily seen from the above list that certain members of the Committee have been selected by the Lord President of the Council (in whose hands the selection lies) in right rather of their past services—official or unofficial—to the cause of education, than in consideration of the particular office they hold at present. This is still more apparent in the case of the Scotch Committee, which contains, or contained, one member who held no office, and another who had resigned office.

way between the Board of Admiralty and the Board of Trade. Their position is not so important or authoritative as that of the first-mentioned body; but they are very far from having become the virtual nonentity into which the latter has in course of time declined. They exercise, indeed, no administrative functions, and take no part in the current business of the office; but they may be summoned from time to time for consultative purposes by the Lord President of the Council; and they are as a matter of fact called together whenever any important question of general policy has to be decided. The quorum of the Committee is three, but, supposing that number not to be present on a given day, the Lord President or Vice-President of the Committee would undertake of themselves to decide the business upon which the Committee was summoned. The *effective* power of this body in determining the policy of the chief of the department has given rise to some divergence of opinion among high authorities. It was contended some years ago by Lord Sherbrooke (then Mr. Lowe) that the Committee were not only designed to act as a check upon the Lord President of the Council in respect to the making of minutes, but that the chief responsibility for making minutes rested upon them, and that if the Committee differed in opinion with the President their opinion would certainly prevail. Lord Granville, however, who had lately been Mr. Lowe's official chief in the Education Department, expressed himself in different language on this subject; and it will appear tolerably clear, when we come to consider the constitutional distribution of responsibility for the policy pursued in this department, that Mr. Lowe's view was too broadly stated, and that if

the opinion of the Committee "prevailed" on any question of policy, it could only be because the Lord President had voluntarily chosen to defer to their opinion.

Before entering, however, upon this question, it is advisable to point out what is the nature of the duties of this department. Down to the year 1870 its functions consisted exclusively, as they still consist very largely, in the administration of a specific fund of public moneys—those, namely, which are annually voted by Parliament for the support of education. Out of this fund the Committee of Council make contributions towards the furnishing of schoolhouses, the stipends of pupil teachers, and the supply of educational appliances; towards the maintenance of schools by annual grants, the amount of which is determined partly by the regularity of the school children's attendance, and partly by their proficiency as tested by the results of an inspector's examination; and towards the establishment and support of training-colleges for teachers. But since the passing of the great educational measure of 1870, the business of the department extends far beyond that of administering the annual grant. It stands charged with the duty of seeing that every one of the local areas (towns, parishes, or groups of parishes) into which the country has been marked out for this purpose, is supplied with "a sufficient amount of accommodation in public elementary schools available for all the children resident in such district for whose elementary education efficient and suitable provision is not otherwise made;" and, in case of such supply appearing to be insufficient, of directing its augmentation by either voluntary or compulsory methods, in the manner

prescribed by the Education Act. In the execution of this duty the department has, of course, to exercise a sort of semi-judicial discretion (either immediately, or in some cases after a "public inquiry," held according to the directions of the Act) on the question whether the injunctions of the Act are in any given case fulfilled, or, if not, what would amount to a reasonable fulfilment of them, having regard to the indefinitely varying circumstances of the various school districts throughout the whole United Kingdom. The large increase of work which has thus devolved upon the office has of course necessitated a considerable addition of late years to the number of school inspectors, and also some increase of the staff of examiners, or officials whose function is to consider and take action upon the inspectors' reports. The correspondence of the department is consequently very extensive, and engages many pens; but nevertheless the whole of it is carried on under the fiction that the Committee of Council are themselves the writers or recipients of all the letters which pass between them and private individuals. Every letter that leaves the office is written in the name of "My Lords," even though it may be only the decision of an assistant secretary or of an examiner upon a point of practice, and may not even have been seen by the secretary. In this, as in other public departments for the transaction of ordinary business, the permanent officer is trusted with the name of the department as he might be with a common seal. In the great mass of public business it is impossible to submit every letter to the official head; and where a case is clear, and covered by precedents, the secretary or examiner would be

justified in deciding it himself in the name of "My Lords." Much, however, of the work of these officials, especially as regards the administration of the fund annually voted by Parliament for education, is regulated for them by what is called "the Code,"—a minute issued every year by the Committee of Council, fixing the conditions under which payments are to be made to the various schools in receipt of the grant. These minutes, which emanate, it is to be observed, from "the Committee" only, and not, like Orders in Council, from the whole body of the Privy Council itself, under the name of the Sovereign, are as a rule always submitted for approval at one of the Committee meetings (though, if the Committee neglected to attend, a minute might be validly passed by the President and Vice-President alone); and when thus passed are laid upon the table of both Houses for a month before being acted upon. It is by an examination of this Code, and also of the annual reports presented by the inspectors, that Parliament is enabled to exercise supervision over the details of educational administration and to suggest extensions or restrictions of the sphere of the department's action. For Scotland a separate Code is issued; and the whole educational system of the country is, moreover, administered under a separate Act of Parliament.

The permanent staff of the Education Department is headed by a secretary and four assistant-secretaries — three for England and one for Scotland. The Vice-President answers to the "parliamentary secretary" of other departments; but his position is one of considerably greater importance than theirs.

His office has, on one occasion, been associated with a seat in the Cabinet and he is the official by whom the current business of the department is almost entirely conducted. It is a matter of discretion with him as to what he may think fit to bring before his chief, and in point of fact nine-tenths of the business of the department is conducted without reference to the President; but there is, nevertheless, a general understanding that no new rule of practice should be established, and no alterations made in existing rules, without the President's sanction. And, generally speaking, despite the importance and authority of the Vice-President of the Committee, the Lord President of the Council must still be held to remain *constitutionally* responsible for the conduct of the department.[1]

Attached to the Education Department is the Department of Science and Art, previously under the direction of the Board of Trade, but transferred therefrom by Order in Council in 1856. This affiliated department is

[1] It was, however, in connection with this branch of the Executive that there occurred the apparent exception (alluded to in Chap. III.) to the rule that responsibility attaches to the *chief* departmental minister, and to him alone. In the year 1864 Mr. Lowe resigned the office of Vice-President on account of a vote of censure passed upon the department by the House of Commons. But he did so because he regarded that vote as conveying a personal reflection upon himself, and his resignation must therefore be regarded as merely the satisfaction of his own sense of dignity and propriety, and not as an act of obedience to any constitutional obligation, or as the creation of any constitutional precedent. This, indeed, was subsequently made clear by a statement of his own chief. Lord Granville said afterwards, in a debate in the House of Lords, that he considered Mr. Lowe's resignation "unnecessary." "Technically," he added, "the Lord President should have resigned, and the Vice-President might have retained his office."

managed by a Board composed only of the Lord President and Vice-President of the Committee of Council on Education, none of the other members of the Committee being consulted with reference to the business. To advise and assist the Board there are, in addition to the secretary and assistant secretary, other permanent officers, and it retains a staff of professors, whose duty it is to superintend the various art schools in the provinces, and conduct examinations thereat.

The other executive functions of the Privy Council, which were at one time numerous and complicated, are now reduced to but one. The abolition of the Board of Health, and the transfer of its powers and duties to the Local Government Board, has left the Privy Council with no other sanitary functions to perform than those created by the Contagious Diseases (Animals) Act of 1867, and subsequent statutes, and now discharged by what is called the Veterinary Department of the Council. Into the precise details of these duties it is unnecessary here to enter. It is sufficient to say that they resolve themselves generally into the issue from time to time of Orders in Council prohibiting the importation of cattle from countries infected with cattle plague, or prescribing rules for their admission to our ports, and regulating their mode of transport after their arrival.

CHAPTER XIII.

OTHER EXECUTIVE OFFICES.

BESIDES the great departments of State which have been enumerated and described above, there are certain other executive offices which, either in right of the constitutional importance of the limited functions attached to them, or by reason of their being commonly associated with the high dignity and authority of a seat in the Cabinet, deserve brief mention. The first of these to claim notice on both of the above-mentioned grounds is the office of Lord Privy Seal. The incumbent of this office is invariably a Cabinet minister; and his official duties being, although constitutionally important, of by no means an onerous nature, the place is usually conferred upon some eminent politician, who, while unfitted from age or other reasons for undertaking heavy administrative duties, may be competent to render valuable assistance at the Council Board. His departmental duties consist in applying the Privy Seal once or twice a week to a certain number of public instruments—an act which, though it has now become a mere formality, is nevertheless one of great historical interest. It was by means of the Seals—in the first instance and primarily, the Great Seal, but after-

wards and in a secondary degree, the Privy Seal—that in earlier periods of our history the only known restraint could be imposed upon the acts of the Crown. The Privy Council had from very ancient times laid claim to take cognisance of every grant or writ issued by the Sovereign, and to authenticate it by the imprint of the Great Seal; and through the instrumentality of the Chancellor, who was always a member of the Council, and also the custodian of the Great Seal, they could refuse to give effect to the King's wishes, or to legalise his grant. This rule was often regarded by Sovereigns as a vexatious and unwarrantable restraint, and they sought to escape from it either by retaining personal possession of the Great Seal, or by insisting that the use of smaller royal seals, including the Privy Seal, which at first were kept in the King's own hands, was sufficient for the purposes of authentication. Parliament, however, always protested against these claims, and when at length the Privy Seal passed into the hands of a regular officer, it was maintained by the lawyers that the Great Seal ought to be affixed to no bill on a verbal warrant, or otherwise than upon a formal writ of Privy Seal. This doctrine, though at first contested by the Crown, eventually won undisputed acceptance. From the time of Henry VIII. the Privy Seal has been the warrant of the legality of grants from the Crown, and the necessary authority to the Chancellor to affix the Great Seal. All grants of the Crown for appointments to office, creation of honours, licenses, patents of inventions, pardons, etc., must be made by charters or letters-patent under the Great Seal, and the command to the Lord Chancellor to prepare such an instrument is in all but a few excepted

cases conveyed by means of a writ or bill sealed with the Privy Seal.[1]

Having only these merely formal duties to discharge in his departmental capacity, the Lord Privy Seal is often in a position to afford assistance to the administration in other ways. He has occasionally been despatched on a special mission abroad; at other times his office has been held in conjunction with another, as, for instance, that of Postmaster-General.

Another official who is not infrequently a Cabinet minister is the Chancellor of the Duchy of Lancaster. The Court from which this office takes its name had its origin in the reign of Henry IV., who, conscious that he was more rightfully Duke of Lancaster than King of England, determined to save his right in the duchy, whatever should befall the kingdom, and accordingly, with the authority of Parliament, severed the possessions, liberties, etc., of the duchy from the Crown, and settled them on himself and his heirs. So they continued during this and the two following reigns, and after being reappropriated to the Crown by Edward IV. were once more severed from it by Henry VII., and have remained distinct ever since. The Court, which was anciently a kind of Chancery Court, now chiefly takes cognisance of matters connected with the revenues of the duchy. Its jurisdiction, however, such as it is, is exercised by a Vice-Chancellor, a professional lawyer. The Chancellor himself has no duties in connection with the office, which is usually, therefore, bestowed upon some prominent statesman whose abilities it is desired to utilise in the consid-

[1] Sir Harris Nicolas, *Proceedings, etc., of Privy Council*, p. ccxi.

eration of general questions of policy, and whose time is thus left free for that purpose.

A place in the Cabinet is also sometimes associated with the presidency of the Office of Works, a post created pursuant to an Act of Parliament passed in 1851. Some twenty years previous to this date the public works and buildings of Great Britain had been for the first time placed under the management of a responsible minister by being assigned to the charge of the Commissioners of Woods and Forests. Under this arrangement, however, a practice grew up of using the land revenues of the Crown to defray expenses connected with public parks and buildings; and to check this, it was resolved by Parliament in 1851 that the land revenues should be kept apart, and that the cost of erecting or maintaining public buildings should be met by votes in Committee of Supply. And in the following year the department of Woods and Forests was separated from that of Public Works by an Act of Parliament creating the present department. This Board—the full title of which is the "Office of Her Majesty's Public Works and Buildings"—consists of a "First Commissioner" and of the following *ex officio* members, namely, the Principal Secretaries and the President of the Board of Trade. As in the other cases which have been noticed, the Board has only a nominal existence; and the department is practically under the charge of one responsible head, the First Commissioner, who is himself under the control of the Treasury.

The Board has the custody and supervision of the royal palaces and public parks, and of all public buildings not specially assigned to the care of other departments,

whether the same are appropriated for Government offices, for national collections, or for the recreation and enjoyment of the public. The First Commissioner is always a Privy Councillor—sometimes, as has been said, a Cabinet minister, and more usually a member of the Lower than of the Upper House of the Legislature. Indeed, as there is no "political secretary" or other like official associated with him in his duties, it would be difficult to secure his proper responsibility to Parliament without placing him in the House of Commons; his capacity to sit in that assembly having been conferred upon him by the Act creating his office. Here he is, as a matter of fact, very closely watched in the execution of his duties; there being no matters, probably, which are the subject of more frequent parliamentary questions than those connected with the administration of the First Commissioner of Works. Much of this inquiry, however, arises rather from individual curiosity than from any necessity of asserting the principle of parliamentary control. The Board is placed by Act of Parliament under the direction of the Treasury, whose sanction is required to any work not directly ordered by Parliament. All estimates for large public works are submitted to the Treasury, by which department, also, the secretary, clerks, and ordinary employés of the office are appointed. The staff of the First Commissioner of Works consists of a permanent secretary, an assistant secretary, and a considerable number of draftsmen, surveyors, and clerks.

CHAPTER XIV.

THE TENDENCIES OF CENTRAL GOVERNMENT IN ENGLAND.

It is sometimes said, in reply to certain complaints which are not uncommon in these days, that the English citizen was much more "over-governed" in former times than in our own. Except, however, upon such a construction of the term "government" as to make it include "legislation," this assertion is obviously opposed to the facts. True it is, no doubt, that in earlier periods of our history the legislator undertook to control and regulate men's actions in many departments of social life which are now regarded as altogether beyond his proper cognisance; but a little consideration will show that at the time when legislation was thus unduly active, the conduct of the citizen was nevertheless subject to far less of that organised supervision and administrative direction to which alone the word "government" properly applies, than it undergoes at present. In the sixteenth and seventeenth centuries, for instance—the period when the English Statute-book will be found, perhaps, most crowded with laws sumptuary, laws ceremonial, laws injunctive of religious, moral, and social observance of all kinds—the administrative interference of the Govern-

ment in any of the various matters to which these laws related was of the most limited kind. The State, which was imposing all sorts of commercial restrictions upon its subjects, had nothing answering to a Board of Trade. Ever busying itself about the orthodoxy or heterodoxy of national opinion, it possessed no machinery even remotely corresponding to that of a department of Public Education. It multiplied its commands and prohibitions to local authorities while subjecting them to no sort of regular or effective central control. Even the foundation of the vast system of poor relief was laid in a single short Act of Parliament, addressed mainly to country justices and parish overseers. There was no lack of the disposition to "over-government"—no deficiency of the "paternal" spirit on the part of the State; but it was deemed a sufficient (as indeed it was at the time the only possible) gratification of that spirit to embody the paternal injunction of the State in a law, to attach penalties to disobedience to that law, and to leave its enforcement to any one who pleased. In short, the so-called over-government of those days was merely another name for a display of excessive and misguided activity on the part of the law maker and the law courts; and that activity is not what we are accustomed to call by the name of government in these days. In the sense in which the word is used at present—in the sense which excludes alike the functions of the legislator and the functions of the judge—we are being indefinitely more "governed" in this current year than we were fifty, twenty, or even ten years ago; and we shall, in all human probability, be still more governed ten years hence than we are to-day.

The reaction raised against meddlesome legislation by growing political enlightenment did, however, undoubtedly lead at first and for a time to an undue depreciation of the powers and undue restriction of the functions of government properly so called. A gradual apprehension of the unquestionable truth that much of the necessary work of social life could and would be far better done by individuals acting for themselves than by the best-intentioned and most fatherly of Governments acting for them, begot the erroneous belief that not "most" only of the work, but all of it, might be safely and wisely left to private enterprise. It began to be accepted as an axiom among a certain increasing school of politicians that the duties of a Government, rightly understood, included little if anything more than the simple functions of police; and that, *cæteris paribus*, that State was likely to be most prosperous whose rulers, after having cleared away all obstacles to perfect freedom of transaction between man and man, should retire gracefully to their bureaux and content themselves with merely watching to see that the constable and the magistrate did their duty in preventing this freedom of transaction from being checked by violence or abused by fraud. A proposition founded upon so unduly wide a generalisation from observed facts, held good, of course, only to the extent to which the generalisation itself was sound. It was found, in other words, and as might have been expected, that freedom of private enterprise would only supply the place of governmental action in cases where the interests of the State were identical with the *recognised* interests of the individual; and the only interest of *universal recognition* among mankind

is that embodied in the pursuit of material prosperity. The doctrine of *laissez-faire*, in short, was a doctrine drawn from political economy and pressed into the service of politics; and it necessarily fails to apply beyond the limits within which the two sciences coincide. Political economy is the science of material prosperity, and in so far as the object of all government is to promote the material prosperity of the people governed, the wisest ruler is he who gives the freest play, consistent with the observance of actual law, to the one great motive force upon which economy bases its calculations—the acquisitive impulse—among his subjects. But in so far as government is concerned with other interests than that of the material advancement of peoples,—in so far as it seeks to promote their physical health, or their moral improvement, or their intellectual progress,—its relation to economic forces is altogether different. The everyday experience of life is enough to satisfy any observer that the motives which make men careful of their health, or studious of the purity of their morals, or zealous for the improvement of their minds, are motives which cannot, among the mass of men, be trusted to hold their own against the simple desire of money-getting; and that, unless the command of the State gives voice and enforced authority to those higher impulses to which only a select minority among its citizens are able, of their own free will, to give due weight, such impulses will, on the national scale, be overborne and submerged altogether. A perception of this truth—and in this country at any rate we were not long in perceiving it—of course compelled a reconsideration of the prevailing theory of government, and, by consequence, a sharp revival of the tendency to

State intervention in many matters from which the State had hitherto held aloof. But this partial return to the older theory of the functions of government was coincident with a growing distrust of the older *methods* by which Governments had sought to execute these functions. Right and necessary as it might be that the State should once more revert, so far as certain departments of human action were concerned, to the paternal idea of its duties, it was impossible for the modern politician to shut his eyes to the extreme imperfection of the means by which the State had in former days attempted to realise this idea. The lumber of dead-letter laws which burdened the Statute-book told a tale too plain to be mistaken. It seemed to arise almost naturally out of modern conceptions of government, that wherever the State thought fit to depart from the *laissez-faire* policy it should definitely take matters into its own hands; that it should not be content, as in former times, with merely *commanding* the citizen to do certain things, but should itself see that he does it. Such a conclusion was indeed a necessary result of the particular process of experience by which the principle of State interference had been re-established.

It must not be supposed, however, that the growth of this modern theory of government has been attended by anything like a *proportionate* extension of the functions of the Executive. In many other countries it would have given an extravagant impetus to whatever centralising forces might have been previously in existence; but among ourselves, fortunately, "more government" does not of necessity mean "more centralisation." Our vigorous local institutions supply an abundance of effective

machinery for the legislative reformer to work with; and they have been largely, and, indeed, for most of the work which the State has thought fit of late years to withdraw from the operation of private enterprise, almost exclusively employed. For instance, the great scheme of public education adopted eleven years ago was carefully fitted into the system of local self-government; in the consolidation of the laws relating to the public health, and the simplification of the machinery by which these are locally administered, the principle of self-government is still retained as the groundwork of the whole; and the same mode of procedure has been observed in such other specimens of modern philanthropic legislation as the Artisans' Dwellings Act. In other words, while recognising the impossibility of trusting to individual action for the efficient performance of certain public duties, the State has reflected the national inclination to respect the principle of individualism by still leaving the initiative in the hands of local assemblages of individuals, while holding its own ultimate compulsory authority in the background. The idea seems to have been to appeal, in the first instance, from private citizens in their individual capacity to the same men in their corporate capacity, and not to invoke the intervention of the Executive until this appeal has obviously proved futile. If A, B, C, etc., individually neglect the duty of observing the rules of health, or of educating their children, or of preventing the working population of their local areas from being crowded together into confined spaces, which thereby become centres of disease, let us try, our legislation seems to say, whether A, B, C, etc., will be willing, upon the express admonition and

injunction of the Legislature, to take better order in these matters through their local representatives; and only in the event of their persistent refusal or neglect to do this, need the action of the Central Government be called into play at all.

It is undeniable, however, that all legislation of this sort, directed though it be in the first instance to the mere enlargement of the duties and powers of local authorities, does nevertheless add considerably to the work of the Central Executive, and proportionately extend its functions of government. Nor can it be doubted that the tendency towards such legislation is on the increase in at least three directions. The subjects of public education and public health have already been briefly referred to; and of these it need only be further added, by way of summing up, that we appear in all our legislation to be more and more unreservedly accepting the principle that the physical well-being and the mental and moral training of the community are matters within the special care of the State. As regards education in particular, we have now, for good or evil, advanced far beyond that simple plea upon which State interference with the instruction of the people was originally justified—namely, as a mere process of insurance against certain evils, undoubtedly of State concern, to which deficiency of education exposes, or is believed to expose, a society. Our educational system has already begun to propose to itself much more ambitious and extensive aims than that of a mere reduction of the crime and pauperism which are so largely due to ignorance; and our legislators are continually acting, or being solicited to act, on the assumption that it is their duty to take care

that the greatest amount of instruction which social and financial conditions leave it possible to impart, be given to the largest possible number of persons in the community. And since, though the actual provision of this education is left to the charge of local government, its sufficiency and efficiency is determined solely by the Central Executive, it follows that every advance of our educational system tends to bring the conduct of individuals under a more and more imperious form of State control.

The same considerations apply, *mutatis mutandis*, to the subject of public health; but there is yet another and wide sphere of civic action over which the Executive steadily inclines to extend its authority. In the two above cases its action is defended by appeal to the interests of society at large; but in that about to be considered it would be difficult to bring the interference of the State under this plea. We cannot so treat the case in which the State acts as the protector, not of the whole community, but of certain classes thereof—the classes selected being, of course, those which are, or are assumed to be, unable to protect themselves. The oldest and of course the most defensible example of this species of Government interference was that initiated by the legislation protective of children engaged in certain of the manufacturing industries. The Factories and Workshops Acts imposed restrictions both upon parents and employers of labour in respect of the ages at which, and the hours during which, children should be allowed to work, and entrusted a department of the Central Government with the duty of seeing that these Acts were respected. But this special intervention on behalf of a

manifestly powerless class has been followed by many others on behalf of classes of whom helplessness cannot, or cannot in the same sense, be predicated. They are interferences of the State for the protection of adults whose position, in respect of the matters which have provoked their interference, is theoretically at least a position of voluntary contract, but who, from the fact that they do not protect themselves, are inferred to be practically incapable of so doing. Instances of such interferences of the State are to be found in the various Mines Regulation Acts, and later, in an even more signally illustrative shape, in the Unseaworthy Ships Act; all of which statutes have necessitated an extension of the functions of the Central Executive in order to carry out their provisions. Nor does a parliamentary session often pass without some scheme of philanthropic legislation being proposed, which would, if adopted, involve an addition to the labours of some department of the Executive. It is beyond the province of a work like this to pronounce any opinion on the policy or impolicy of the course upon which the nation appears to have entered in this respect; but it is permissible to point out in what way and to what extent it operates to extend the functions of the Central Government.

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